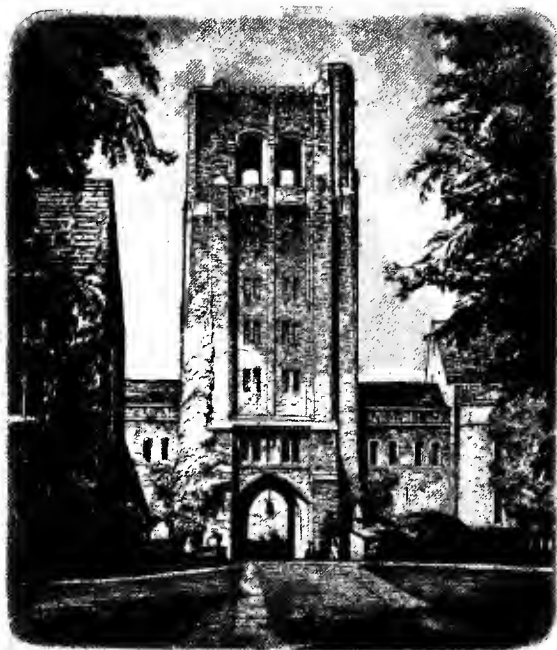




KF

1636

1913



Cornell Law School Library

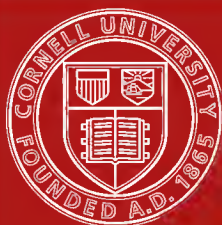
Cornell University Library  
KF 16361913

Laws on trusts and monopolies : domestic



3 1924 019 216 179

18W



Cornell University  
Library

The original of this book is in  
the Cornell University Library.

There are no known copyright restrictions in  
the United States on the use of the text.





CORNELL UNIVERSITY LAW LIBRARY.

THE GIFT OF

Dean Frank Irvine

Ithaca, N.Y.

Date, Dec. 22, 1913.

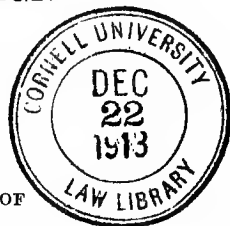




cal;

# LAWS ON TRUSTS AND MONOPOLIES

DOMESTIC AND FOREIGN  
WITH AUTHORITIES



COMPILED UNDER THE DIRECTION OF

J. J. SPEIGHT

CLERK COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES

BY

*done*  
NATHAN B. WILLIAMS  
OF THE ARKANSAS BAR

---

PRINTED FOR THE USE OF THE COMMITTEE

---

WASHINGTON, D. C., DECEMBER 1, 1913



WASHINGTON  
GOVERNMENT PRINTING OFFICE

1913



B 3098

COMMITTEE ON THE JUDICIARY,  
HOUSE OF REPRESENTATIVES.

SIXTY-THIRD CONGRESS.

---

HENRY D. CLAYTON, Alabama, *Chairman.*

EDWIN Y. WEBB, North Carolina.  
CHARLES C. CARLIN, Virginia.  
JOHN C. FLOYD, Arkansas.  
ROBERT Y. THOMAS, Jr., Kentucky.  
H. GARLAND DUPRÉ, Louisiana.  
WALTER I. MCCOY, New Jersey.  
DANIEL J. MCGILLICUDDY, Maine.  
JACK BEALL, Texas.  
JOSEPH TAGGART, Kansas.  
LOUIS FITZHENRY, Illinois.

JOHN F. CAREW, New York.  
JOHN B. PETERSON, Indiana.  
JOHN J. MITCHELL, Massachusetts.  
ANDREW J. VOLSTEAD, Minnesota.  
JOHN M. NELSON, Wisconsin.  
DICK T. MORGAN, Oklahoma.  
HENRY G. DANFORTH, New York.  
L. C. DYER, Missouri.  
GEORGE S. GRAHAM, Pennsylvania.  
WALTER M. CHANDLER, New York.

J. J. SPEIGHT, *Clerk.*

## TABLE OF CONTENTS.

Unless otherwise indicated, references are to Revised Statutes or codes of the several States.

|   | <b>Page.</b> |
|---|--------------|
| United States.....  | 1-37         |
| Sherman antitrust law.....                                  | 1            |
| Act of August 15, 1894.....                                 | 3            |
| Act of February 12, 1913.....                               | 5            |
| Act of February 4, 1887.....                                | 6            |
| Act of February 11, 1903.....                               | 7            |
| Joint resolution of March 7, 1906.....                      | 8            |
| Joint resolution of March 21, 1906.....                     | 10           |
| Act of June 25, 1910.....                                   | 11           |
| Judicial Code, January 1, 1912.....                         | 13           |
| Act of February 25, 1903.....                               | 13           |
| Act of February 14, 1903.....                               | 14           |
| Act of June 13, 1906, immunity of witnesses.....            | 15           |
| Sundry civil bill, March 4, 1913.....                       | 16           |
| Panama Canal act, August 24, 1912.....                      | 17           |
| Naval appropriation bill, March 4, 1913.....                | 20           |
| District of Columbia appropriation bill, March 4, 1913..... | 21           |
| Equity rules, Supreme Court United States.....              | 23           |
| Table of cases decided under Sherman law.....               | 24-34        |
| Resale contracts, cases.....                                | 34-36        |
| Labor cases.....  | 36           |
| Power of Congress under antitrust act, cases.....           | 37           |
| Alabama :   |              |
| Constitution.....   | 39           |
| Statutes.....   | 39-42        |
| Court decisions.....  | 42           |
| Arizona :   |              |
| Constitution.....   | 43           |
| Statutes.....   | 43-47        |
| Arkansas :  |              |
| Constitution.....   | 49           |
| Statutes.....   | 49-56        |
| Court decisions.....  | 56           |
| California :  |              |
| Constitution.....   | 57           |
| Statutes.....   | 57-62        |
| Court decisions.....  | 62           |

|                            |          |
|----------------------------|----------|
| Colorado :                 | Page.    |
| Constitution .....         | 63       |
| Statutes .....             | 63-66    |
| Connecticut :              |          |
| Constitution .....         | 67       |
| Statutes .....             | 67       |
| Court decisions .....      | 67       |
| Delaware .....             | 69       |
| District of Columbia ..... | 71       |
| Florida :                  |          |
| Statutes .....             | 73       |
| Court decisions .....      | 73       |
| Georgia :                  |          |
| Constitution .....         | 75       |
| Statutes .....             | 75-78    |
| Court decisions .....      | 78       |
| Idaho :                    |          |
| Constitution .....         | 79       |
| Statutes .....             | 79-86    |
| Illinois :                 |          |
| Statutes .....             | 87-94    |
| Court decisions .....      | 94-96    |
| Indiana :                  |          |
| Statutes .....             | 97-104   |
| Court decisions .....      | 104      |
| Iowa :                     |          |
| Statutes .....             | 105-108  |
| Court decisions .....      | 108      |
| Kansas :                   |          |
| Statutes .....             | 109-123  |
| Court decisions .....      | 123      |
| Kentucky :                 |          |
| Constitution .....         | 125      |
| Statutes .....             | 125-130  |
| Court decisions .....      | 130      |
| Louisiana :                |          |
| Statutes .....             | 131-135  |
| Court decisions .....      | 135      |
| Maine :                    |          |
| Statutes .....             | 137, 138 |
| Maryland :                 |          |
| Constitution .....         | 139      |
| Massachusetts :            |          |
| Statutes .....             | 141-147  |
| Court decisions .....      | 147      |
| Michigan :                 |          |
| Constitution .....         | 149      |
| Statutes .....             | 149-157  |
| Court decisions .....      | 157      |
| Minnesota :                |          |
| Statutes .....             | 159      |
| Court decisions .....      | 160      |

|                      |         |
|----------------------|---------|
| Mississippi :        | Page.   |
| Constitution.....    | 161     |
| Statutes.....        | 161-169 |
| Court decisions..... | 169     |
| Missouri :           |         |
| Statutes.....        | 171-187 |
| Court decisions..... | 187     |
| Montana :            |         |
| Constitution.....    | 189     |
| Statutes.....        | 189-192 |
| Court decisions..... | 192     |
| Nebraska :           |         |
| Constitution.....    | 193     |
| Statutes.....        | 193-209 |
| Court decisions..... | 209     |
| Nevada.....          | 211     |
| New Hampshire :      |         |
| Statutes.....        | 213     |
| Court decisions..... | 213     |
| New Jersey :         |         |
| Statutes.....        | 215-221 |
| Court decisions..... | 221     |
| New Mexico :         |         |
| Statutes.....        | 223     |
| New York :           |         |
| Statutes.....        | 225-228 |
| Court decisions..... | 228     |
| North Carolina :     |         |
| Statutes.....        | 231-240 |
| Court decisions..... | 240     |
| North Dakota :       |         |
| Constitution.....    | 241     |
| Statutes.....        | 241-250 |
| Ohio :               |         |
| Statutes.....        | 251-256 |
| Court decisions..... | 256     |
| Oklahoma :           |         |
| Constitution.....    | 257     |
| Statutes.....        | 258-267 |
| Court decisions..... | 267     |
| Oregon :             |         |
| Court decisions..... | 269     |
| Pennsylvania :       |         |
| Court decisions..... | 271     |
| Rhode Island :       |         |
| Court decisions..... | 273     |
| South Carolina :     |         |
| Constitution.....    | 275     |
| Statutes.....        | 275-281 |
| Court decisions..... | 281     |
| South Dakota :       |         |
| Constitution.....    | 283     |
| Statutes.....        | 283-288 |
| Court decisions..... | 288     |

|                                |                |
|--------------------------------|----------------|
| <b>Tennessee :</b>             | <b>Page.</b>   |
| Constitution .....             | 289            |
| Statutes .....                 | 289, 290       |
| Court decisions .....          | 290            |
| <b>Texas :</b>                 |                |
| Constitution .....             | 291            |
| Statutes .....                 | 291-310        |
| Court decisions .....          | 310            |
| <b>Utah :</b>                  |                |
| Constitution .....             | 313            |
| Statutes .....                 | 313-317        |
| <b>Vermont :</b>               |                |
| Statutes .....                 | 319            |
| <b>Virginia :</b>              |                |
| Constitution .....             | 321            |
| <b>Washington :</b>            |                |
| Constitution .....             | 323            |
| <b>West Virginia .....</b>     | <b>325</b>     |
| <b>Wisconsin :</b>             |                |
| Statutes .....                 | 327-331        |
| Court decisions .....          | 331            |
| <b>Wyoming :</b>               |                |
| Constitution .....             | 333            |
| Statutes .....                 | 333, 334       |
| <b>Foreign countries .....</b> | <b>335-438</b> |
| Australia .....                | 335-354        |
| Canada .....                   | 355-375        |
| Cape of Good Hope .....        | 377-379        |
| Great Britain .....            | 381-418        |
| Japan .....                    | 419            |
| New Zealand .....              | 421-438        |



# LAWS ON TRUSTS AND MONOPOLIES, DOMESTIC AND FOREIGN, WITH AUTHORITIES.

## UNITED STATES.

### STATUTES.

#### THE SHERMAN ANTITRUST LAW.

[26 Stat. L., 209. July 2, 1890.]

AN ACT To protect trade and commerce against unlawful restraints and monopolies.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Restraint prohibited in commerce between States and foreign nations.

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Punishment.

SEC. 3. Every contract, combination in form of trust or otherwise, or conspiracy, in restraint of trade or commerce in any Territory of the United States or of the District of Columbia, or in restraint of trade or commerce

Monopoly prohibited.  
Specific provision as to territory involved.

between any such Territory and another, or between any such Territory or Territories and any State or States or the District of Columbia, or with foreign nations, or between the District of Columbia and any State or States or foreign nations, is hereby declared illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding \$5,000, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

Conspiracy.

Punishment.

Circuit courts  
(now district  
courts) have  
jurisdiction.

SEC. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Duty of Attorney  
General.

Injunction.

Temporary orders.

Additional parties.

SEC. 5. Whenever it shall appear to the court before which any proceedings under section four of this act may be pending, that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof.

Forfeiture of  
property.

SEC. 6. Any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof) mentioned in section one of this act, and being in the course of transportation from one State to another, or to a foreign country, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

SEC. 7. Any person who shall be injured in his business or property by any person or corporation by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

Threefold damages to injured party.

SEC. 8. That the word "person," or "persons," wherever used in this act shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

Definitions.

[28 Stat. L., 570. Aug. 15, 1894.]

AN ACT To reduce taxation and provide revenue for the Government, and for other purposes.

SEC. 73. That every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal, and void, when the same is made by or between two or more persons or corporations either of whom is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor, and, on conviction thereof in any court of the United States, such person shall be fined in a sum not less than \$100 and not exceeding \$5,000, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months.

Public policy.  
Declaration of.  
(Amended by  
Public 370,  
Feb. 12, 1913.)

Conspiracy of  
importers.

Punishment.

SEC. 74. That the several circuit courts of the United States are hereby invested with jurisdiction to prevent

Circuit courts  
(now district  
courts), jurisdiction of.

Duty of district attorneys.

and restrain violations of section seventy-three of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petitions setting forth the case and praying that such violations shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises.

Restraining orders.

Other parties.

SEC. 75. That whenever it shall appear to the court before which any proceeding under the seventy-fourth section of this act may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned whether they reside in the district where the court is held or not; and subpoenas to that end may be served in any district by the marshal thereof.

Condemnation and seizure of property.  
(Amended by Public 370, Feb. 12, 1913.)

SEC. 76. That any property owned under any contract or by any combination or pursuant to any conspiracy (and being the subject thereof) mentioned in section seventy-three of this act, and being in the course of transportation from one State to another or to or from a Territory or the District of Columbia shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law.

Threefold damages to injured party.

SEC. 77. That any person who shall be injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of the United States in the district in which the defendant resides or is found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

Received by the President August 15, 1894, and not being returned within 10 days became a law without his approval.

[The foregoing sections were expressly preserved in the Dingley Act of 1897. Section 34 of that act (30 Stat., 213) concludes as follows:]

*And further provided*, That nothing in this act shall be construed to repeal or in any manner affect the sections numbered seventy-three, seventy-four, seventy-five, seventy-six, and seventy-seven of an act entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," which became a law on the twenty-eighth day of August, eighteen hundred and ninety-four. Dingley Act  
reservation.

[PUBLIC—No 370. Feb. 12, 1913.]

[H. R. 25002.]

AN ACT To amend section seventy-three and section seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes."

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That section seventy-three and section seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," be, and the same are hereby, amended to read as follows:

"SEC. 73. That every combination, conspiracy, trust, agreement, or contract is hereby declared to be contrary to public policy, illegal, and void when the same is made by or between two or more persons or corporations either of whom, as agent or principal, is engaged in importing any article from any foreign country into the United States, and when such combination, conspiracy, trust, agreement, or contract is intended to operate in restraint of lawful trade, or free competition in lawful trade or commerce, or to increase the market price in any part of the United States of any article or articles imported or intended to be imported into the United States, or of any manufacture into which such imported article enters or is intended to enter. Every person who is or shall hereafter be engaged in the importation of goods or any commodity from any foreign country in violation of this section of this Act, or who shall combine or conspire with another to violate the same, is guilty of a misdemeanor,

Amending  
sec. 73, act  
Aug. 15, 1894.



and on conviction thereof in any court of the United States such person shall be fined in a sum not less than one hundred dollars and not exceeding five thousand dollars, and shall be further punished by imprisonment, in the discretion of the court, for a term not less than three months nor exceeding twelve months."

Amending  
sec. 76, act  
Aug. 15, 1894.

"SEC. 76. That any property owned under any contract or by any combination, or pursuant to any conspiracy, and being the subject thereof, mentioned in section seventy-three of this Act, imported into and being within the United States or being in the course of transportation from one State to another, or to or from a Territory or the District of Columbia, shall be forfeited to the United States, and may be seized and condemned by like proceedings as those provided by law for the forfeiture, seizure, and condemnation of property imported into the United States contrary to law."

[24 Stat. L., 379. Feb. 4, 1887.]

AN ACT To regulate commerce.<sup>1</sup>

Act applies to  
common car-  
riers.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management, or arrangement, for a continuous carriage or shipment, from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States, through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: *Provided, however,* That the provisions of this act shall not apply to the transportation of passengers or

Exceptions.

<sup>1</sup> The parts of the act not relating to combinations are omitted.

property, or to the receiving, delivering, storage, or handling of property, wholly within one State, and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

The term "railroad" as used in this act shall include all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any corporation operating a railroad, whether owned or operated under a contract, agreement, or lease; and the term "transportation" shall include all instrumentalities of shipment or carriage. \* \* \*

SEC. 5. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any contract, agreement, or combination with any other common carrier or carriers for the pooling of freights of different and competing railroads, or to divide between them the aggregate or net proceeds of the earnings of such railroads, or any portion thereof; and in any case of an agreement for the pooling of freights as aforesaid, each day of its continuance shall be deemed a separate offense. Pooling agreements unlawful.

SEC. 7. That it shall be unlawful for any common carrier subject to the provisions of this act to enter into any combination, contract, or agreement, expressed or implied, to prevent, by change of time schedule, carriage in different cars, or by other means or devices, the carriage of freight from being continuous from the place of shipment to the place of destination. \* \* \* Continuous shipments.

[32 Stat. L., 823. Feb. 11, 1903.]

AN ACT To expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, "An act to regulate commerce," approved February fourth, eighteen Expedition of hearings under Sherman law. (Amended by act June 25, 1910.)

hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said circuit, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select. In the event the judges sitting in such case shall be divided in opinion, the case shall be certified to the Supreme Court for review in like manner as if taken there by appeal as hereinafter provided.

Sixty days for  
appeals.

SEC. 2. That in every suit in equity pending or hereafter brought in any circuit court of the United States under any of said acts, wherein the United States is complainant, including cases submitted but not yet decided, an appeal from the final decree of the circuit court will lie only to the Supreme Court, and must be taken within sixty days from the entry thereof: *Provided*, That in any case where an appeal may have been taken from the final decree of a circuit court to the circuit court of appeals before this act takes effect, the case shall proceed to a final decree therein, and an appeal may be taken from such decree to the Supreme Court in the manner now provided by law.

JOINT RESOLUTION Instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies in coal and oil, and report on the same from time to time.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

Commission instructed to examine into subject of railroad discriminations in coal and oil, and make report from time to time.

That the Interstate Commerce Commission be, and is hereby, authorized and instructed immediately to inquire, investigate, and report to Congress, or to the President when Congress is not in session, from time to time as the investigation proceeds—

First. Whether any common carriers by railroad, subject to the interstate-commerce act, or either of them, own or have any interest in, by means of stock ownership in other corporations or otherwise, any of the coal or oil which they, or either of them, directly or through other companies which they control or in which they have an interest, carry over their or any of their lines as common carriers, or in any manner own, control, or have any interest in coal lands or properties or oil lands or properties.

Second. Whether the officers of any of the carrier companies aforesaid, or any of them, or any person or persons charged with the duty of distributing cars or furnishing facilities to shippers, are interested, either directly or indirectly, by means of stock ownership or otherwise in corporations or companies owning, operating, leasing, or otherwise interested in any coal mines, coal properties, or coal traffic, oil, oil properties, or oil traffic over the railroads with which they or any of them are connected or by which they or any of them are employed.

Interest of carriers in coal and oil lands or coal and oil traffic.

Interest of railroad officials in coal and oil lands or coal and oil traffic.

Third. Whether there is any contract, combination in the form of trust, or otherwise, or conspiracy in restraint of trade or commerce among the several States, in which any common carrier engaged in the transportation of coal or oil is interested, or to which it is a party; and whether any such common carrier monopolizes or attempts to monopolize or combines or conspires with any other carrier, company or companies, person or persons to monopolize any part of the trade or commerce in coal or oil or traffic therein among the several States or with foreign nations, and whether or not, and if so, to what extent, such carriers, or any of them, limit or control, directly or indirectly, the output of coal mines or the price of coal and oil fields or the price of oil.

Combination or trust in restraint of trade, or monopoly in coal or oil traffic.

Fourth. If the Interstate Commerce Commission shall find that the facts, or any of them, set forth in the three paragraphs above do exist, then that it be further required to report as to the effect of such relationship, ownership, or interest in coal or coal properties and coal traffic or oil, oil properties, or oil traffic aforesaid, or such contracts or combinations in form of trust or otherwise, or conspiracy or such monopoly or attempt to monopolize or combine or conspire as aforesaid, upon

Commission to make report.

such person or persons as may be engaged independently of any other persons in mining coal or producing oil and shipping the same, or other products, who may desire to so engage, or upon the general public as consumers of such coal or oil.

System of car supply and distribution.

Fifth. That said commission be also required to investigate and report the system of car supply and distribution in effect upon the several railway lines engaged in the transportation of coal or oil as aforesaid, and whether said systems are fair and equitable, and whether the same are carried out fairly and properly; and whether said carriers, or any of them, discriminate against shippers or parties wishing to become shippers over their several lines, either in the matter of distribution of cars or in furnishing facilities or instrumentalities connected with receiving, forwarding, or carrying coal or oil as aforesaid.

Commission to suggest remedy and report facts and conclusions.

Sixth. That said commission be also required to report as to what remedy it can suggest to cure the evils above set forth, if they exist.

Seventh. That said commission be also required to report any facts or conclusions which it may think pertinent to the general inquiry above set forth.

Information to be furnished from time to time.

Eighth. That said commission be required to make this investigation at its earliest possible convenience and to furnish the information above required from time to time and as soon as it can be done consistent with the performance of its public duty.

Public Resolution, No. 8, approved March 7, 1906.

JOINT RESOLUTION Amending joint resolution instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies, and report on the same from time to time, approved March seventh, nineteen hundred and six.

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That joint resolution instructing the Interstate Commerce Commission to make examinations into the subject of railroad discriminations and monopolies, and report on the same from time to time, approved March seventh, nineteen hundred and six, is hereby amended by adding the following thereto:

Ninth. To enable the commission to perform the duties required and accomplish the purposes declared herein,



the commission shall have and exercise under this joint resolution the same power and authority to administer oaths, to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence, and to obtain full information, which said commission now has under the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven and acts amendatory thereof or supplementary thereto now in force or may have under any like statute taking effect hereafter. All the requirements, obligations, liabilities, and immunities imposed or conferred by said act to regulate commerce and by "An act in relation to testimony before the Interstate Commerce Commission in cases under or connected with an act entitled 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and amendments thereto," approved February eleventh, eighteen hundred and ninety-three, shall also apply to all persons who may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority herein conferred.

Public Resolution, No. 11, approved March 21, 1906.

[36 Stat. L., 854. June 25, 1910.]

AN ACT To amend an act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted," approved February eleventh, nineteen hundred and three.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section one of the act entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July second, eighteen hundred and ninety, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' 'An act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that may be hereafter enacted," approved February eleventh, nineteen hundred and three, be, and the same is hereby, amended so as to read as follows:

Expedition of  
cases under  
trust laws.

Designation of  
judges.

Failure of  
agreement to  
be certified to  
Chief Justice.

“That in any suit in equity pending or hereafter brought in any circuit court of the United States under the act entitled ‘An act to protect trade and commerce against unlawful restraints and monopolies,’ approved July second, eighteen hundred and ninety,’ ‘An act to regulate commerce,’ approved February fourth, eighteen hundred and eighty-seven, or any other acts having a like purpose that hereafter may be enacted, wherein the United States is complainant, the Attorney General may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to each of the circuit judges of the circuit in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day, before not less than three of the circuit judges of said court, if there be three or more; and if there be not more than two circuit judges, then before them and such district judge as they may select; or, in case the full court shall not at any time be made up by reason of the necessary absence or disqualification of one or more of the said circuit judges, the justice of the Supreme Court assigned to that circuit or the other circuit judge or judges may designate a district judge or judges within the circuit who shall be competent to sit in said court at the hearing of said suit. In the event the judges sitting in such case shall be equally divided in opinion as to the decision or disposition of said cause, or in the event that a majority of said judges shall be unable to agree upon the judgment, order, or decree finally disposing of said case in said court which should be entered in said cause, then they shall immediately certify that fact to the Chief Justice of the United States, who shall at once designate and appoint some circuit judge to sit with said judges and to assist in determining said cause. Such order of the Chief Justice shall be immediately transmitted to the clerk of the circuit court in which said cause is pending, and shall be entered upon the minutes of said court. Thereupon said cause shall at once be set down for reargument and the parties thereto notified in writing by the clerk of said court of the action of the court and the date fixed for the reargument thereof. The provisions of this section shall apply to

all causes and proceedings in all courts now pending, or which may hereafter be brought.

## THE JUDICIAL CODE.

AN ACT To codify, revise, and amend the laws relating to the judiciary.

[Approved Mar. 3, 1911; in effect Jan. 1, 1912.]

SEC. 289. The circuit courts of the United States, upon the taking effect of this act, shall be and hereby are abolished. Circuit courts abolished. \* \* \*

SEC. 290. All suits and proceedings pending in said circuit courts on the day of the taking effect of this act, whether originally brought therein or certified thereto from the district courts, shall thereupon and thereafter be proceeded with and disposed of in the district courts in the same manner and with the same effect as if originally begun therein. District courts supersede circuit courts. \* \* \*

SEC. 291. Wherever, in any law not embraced within this act, any reference is made to, or any power or duty is conferred or imposed upon, the circuit courts, such reference shall, upon the taking effect of this act, be deemed and held to refer to, and to confer such power and impose such duty upon, the district courts. District courts supersede circuit courts.

[32 Stat. L., 854, 903. Feb. 25, 1903.]

AN ACT Making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes.

\* \* \* \* \*

That for the enforcement of the provisions of the act entitled "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and all acts amendatory thereof or supplemental thereto, and of the act entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July second, eighteen hundred and ninety, and all acts amendatory thereof or supplemental thereto, and sections seventy-three, seventy-four, seventy-five, and seventy-six of the act entitled "An act to reduce taxation, to provide revenue for the Government, and other purposes," approved August twenty-seventh, eighteen hundred and

Exemptions  
from prosecu-  
tions under  
trust acts.

ninety-four, the sum of \$500,000, to be immediately available, is hereby appropriated, out of any money in the Treasury not heretofore appropriated, to be expended under the direction of the Attorney General in the employment of special counsel and agents of the Department of Justice to conduct proceedings, suits, and prosecutions under said acts in the courts of the United States: *Provided*, That no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceeding, suit, or prosecution under said acts: *Provided further*, That no person so testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

\* \* \* \* \*

[32 Stat. L., 825, 827. Feb. 14, 1903.]

AN ACT To establish the Department of [Commerce and Labor.]  
Now Department of Commerce, act March fourth, nineteen hundred and thirteen.

\* \* \* \* \*

Bureau of Cor-  
porations.

SEC. 6. That there shall be in the Department of Commerce and Labor a bureau to be called the Bureau of Corporations, and a Commissioner of Corporations who shall be the head of said bureau, to be appointed by the President, who shall receive a salary of \$5,000 per annum. There shall also be in said bureau a deputy commissioner who shall receive a salary of \$3,500 per annum and who shall, in the absence of the commissioner, act as and perform the duties of the Commissioner of Corporations, and who shall also perform such other duties as may be assigned to him by the Secretary of Commerce and Labor or by the said commissioner. There shall also be in the said bureau a chief clerk and such special agents, clerks, and other employees as may be authorized by law.

Powers of bu-  
reau to make  
investigation.

The said commissioner shall have power and authority to make, under the direction and control of the Secretary of Commerce and Labor, diligent investigation into the organization, conduct, and management of the business of any corporation, joint-stock company, or corporate combination engaged in commerce among the several States and with foreign nations, excepting common carriers subject to "An act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and

to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce and to report such data to the President from time to time as he shall require; and the information so obtained, or so much thereof as the President may direct, shall be made public.

In order to accomplish the purposes declared in the foregoing part of this section, the said commissioner shall have and exercise the same power and authority in respect to corporations, joint-stock companies, and combinations subject to the provisions hereof as is conferred on the Interstate Commerce Commission in said "act to regulate commerce," and the amendments thereto in respect to common carriers, so far as the same may be applicable, including the right to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths. May compel the attendances and testimony of witnesses, books, papers, etc. All the requirements, obligations, liabilities, and immunities imposed or conferred by said "act to regulate commerce" and by "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, supplemental to said "act to regulate commerce" shall also apply to all persons who may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section.

It shall also be the province and duty of said bureau, To publish reports. under the direction of the Secretary of Commerce and Labor, to gather, compile, publish, and supply useful information concerning corporations doing business within the limits of the United States as shall engage in interstate commerce or in commerce between the United States and any foreign country, including corporations engaged in insurance, and to attend to such other duties as may be hereafter provided by law.

\* \* \* \* \*

[34 Stat., 798. June 30, 1906.]

AN ACT Defining the right of immunity of witnesses under the act entitled "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, and an act entitled "An act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and an act entitled "An act to further regulate com-

merce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and an act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three.

Immunity of witnesses.

That under the immunity provisions in the act entitled "An act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, in section six of the act entitled "An act to establish the Department of Commerce and Labor," approved February fourteenth, nineteen hundred and three, and in the act entitled "An act to further regulate commerce with foreign nations and among the States," approved February nineteenth, nineteen hundred and three, and in the act entitled "An act making appropriations for the legislative, executive, and judicial expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," approved February twenty-fifth, nineteen hundred and three, immunity shall extend only to a natural person who, in obedience to a subpoena, gives testimony under oath or produces evidence, documentary or otherwise, under oath.

[Public, No. 3. H. R. 2441. Mar. 4, 1913.]

AN ACT Making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes.

\* \* \* \* \*

Limitation on prosecutions of labor and farm organizations.

Enforcement of antitrust laws: For the enforcement of antitrust laws, including not exceeding \$10,000 for salaries of necessary employees at the seat of government, \$300,000: *Provided, however,* That no part of this money shall be spent in the prosecution of any organization or individual for entering into any combination or agreement having in view the increasing of wages, shortening of hours or bettering the conditions of labor, or for any act done in furtherance thereof, not in itself unlawful: *Provided further,* That no part of this appropriation shall be expended for the prosecution of producers of farm products and associations of farmers who cooperate and organize in an effort to and for the purpose to obtain and maintain a fair and reasonable price for their products. \* \* \*

[Public, No. 337. Approved Aug. 24, 1912. H. R. 21969.]

AN ACT To provide for the opening, maintenance, protection, and operation of the Panama Canal, and the sanitation and government of the Canal Zone.

\* \* \* \* \*

SEC. 11. That section five of the act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven as heretofore amended, is hereby amended by adding thereto a new paragraph at the end thereof, as follows:

“From and after the first day of July, nineteen hundred and fourteen, it shall be unlawful for any railroad company or other common carrier subject to the act to regulate commerce to own, lease, operate, control, or have any interest whatsoever (by stock ownership or otherwise, either directly, indirectly, through any holding company, or by stockholders or directors in common, or in any other manner) in any common carrier by water operated through the Panama Canal or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic or any vessel carrying freight or passengers upon said water route or elsewhere with which said railroad or other carrier aforesaid does or may compete for traffic; and in case of the violation of this provision each day in which such violation continues shall be deemed a separate offense.”

Railroads not  
to own ship.  
Exceptions.

Jurisdiction is hereby conferred on the Interstate Commerce Commission to determine questions of fact as to the competition or possibility of competition, after full hearing, on the application of any railroad company or other carrier. Such application may be filed for the purpose of determining whether any existing service is in violation of this section and pray for an order permitting the continuance of any vessel or vessels already in operation, or for the purpose of asking an order to install new service not in conflict with the provisions of this paragraph. The commission may on its own motion or the application of any shipper institute proceedings to inquire into the operation of any vessel in use by any railroad or other carrier which has not applied to the commission and had the question of competition or the possibility of competition determined as herein provided. In all such cases the order of said commission shall be final.

Power of Interstate Commerce Commission.

If the Interstate Commerce Commission shall be of the opinion that any such existing specified service by water other than through the Panama Canal is being operated in the interest of the public and is of advantage to the convenience and commerce of the people and that such extension will neither exclude, prevent, nor reduce competition on the route by water under consideration, the Interstate Commerce Commission may, by order, extend the time during which such service by water may continue to be operated beyond July first, nineteen hundred and fourteen. In every case of such extension the rates, schedules, and practices of such water carrier shall be filed with the Interstate Commerce Commission and shall be subject to the act to regulate commerce and all amendments thereto in the same manner and to the same extent as is the railroad or other common carrier controlling such water carrier or interested in any manner in its operation: *Provided*, Any application for the extension under the terms of this provision filed with the Interstate Commerce Commission prior to July first, nineteen hundred and fourteen, but for any reason not heard and disposed of before said date, may be considered and granted thereafter.

Vessels owned or operated in violation of Sherman law not to use canal.

No vessel permitted to engage in the coastwise or foreign trade of the United States shall be permitted to enter or pass through said canal if such ship is owned, chartered, operated, or controlled by any person or company which is doing business in violation of the provisions of the act of Congress approved July second, eighteen hundred and ninety, entitled "An act to protect trade and commerce against unlawful restraints and monopolies," or the provisions of sections seventy-three to seventy-seven, both inclusive, of an act approved August twenty-seventh, eighteen hundred and ninety-four, entitled "An act to reduce taxation, to provide revenue for the Government, and for other purposes," or the provisions of any other act of Congress amending or supplementing the said act of July second, eighteen hundred and ninety, commonly known as the Sherman Antitrust Act, and amendments thereto, or said sections of the act of August twenty-seventh, eighteen hundred and ninety-four. The question of fact may be determined by the judgment of any court of the United States of competent jurisdiction in any cause pending before it to which the owners or



operators of such ship are parties. Suit may be brought by any shipper or by the Attorney General of the United States.

That section six of said act to regulate commerce, as heretofore amended, is hereby amended by adding a new paragraph at the end thereof, as follows:

"When property may be or is transported from point to point in the United States by rail and water through the Panama Canal or otherwise, the transportation being by a common carrier or carriers, and not entirely within the limits of a single State, the Interstate Commerce Commission shall have jurisdiction of such transportation and of the carriers, both by rail and by water, which may or do engage in the same, in the following particulars, in addition to the jurisdiction given by the act to regulate commerce, as amended June eighteenth, nineteen hundred and ten: Additional jurisdiction of Interstate Commerce Commission.

"(a) To establish physical connection between the lines of the rail carrier and the dock of the water carrier by directing the rail carrier to make suitable connection between its line and a track or tracks which have been constructed from the dock to the limits of its right of way, or by directing either or both the rail and water carrier, individually or in connection with one another, to construct and connect with the lines of the rail carrier a spur track or tracks to the dock. This provision shall only apply where such connection is reasonably practicable, can be made with safety to the public, and where the amount of business to be handled is sufficient to justify the outlay. May order physical connections.

"The commission shall have full authority to determine the terms and conditions upon which these connecting tracks, when constructed, shall be operated, and it may, either in the construction or the operation of such tracks, determine what sum shall be paid to or by either carrier. The provisions of this paragraph shall extend to cases where the dock is owned by other parties than the carrier involved. May fix terms.

"(b) To establish through routes and maximum joint rates between and over such rail and water lines, and to determine all the terms and conditions under which such lines shall be operated in the handling of the traffic embraced. May establish through routes.

"(c) To establish maximum proportional rates by rail to and from the ports to which the traffic is brought, or May fix maximum proportional rates.

from which it is taken by the water carrier, and to determine to what traffic and in connection with what vessels and upon what terms and conditions such rates shall apply. By proportional rates are meant those which differ from the corresponding local rates to and from the port and which apply only to traffic which has been brought to the port or is carried from the port by a common carrier by water.

May require similar arrangements made for all lines.

“(d) If any rail carrier subject to the act to regulate commerce enters into arrangements with any water carrier operating from a port in the United States to a foreign country, through the Panama Canal or otherwise, for the handling of through business between interior points of the United States and such foreign country, the Interstate Commerce Commission may require such railway to enter into similar arrangements with any or all other lines of steamships operating from said port to the same foreign country.”

Orders to be made only on formal complaint.

The orders of the Interstate Commerce Commission relating to this section shall only be made upon formal complaint or in proceedings instituted by the commission of its own motion and after full hearing. The orders provided for in the two amendments to the act to regulate commerce enacted in this section shall be served in the same manner and enforced by the same penalties and proceedings as are the orders of the commission made under the provisions of section fifteen of the act to regulate commerce, as amended June eighteenth, nineteen hundred and ten, and they may be conditioned for the payment of any sum or the giving of security for the payment of any sum or the discharge of any obligation which may be required by the terms of said order.

Bonds.

[Public, No. 433. Approved Mar. 4, 1913. H. R. 23812.]

AN ACT Making appropriations for the naval service for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes.

\* \* \* \* \*

Parties violating Sherman law not to participate in naval contracts.

That no part of any sum herein appropriated shall be expended for the purchase of structural steel, ship plates, armor, armament, or machinery from any persons, firms, or corporations who have combined or conspired to monopolize the interstate or foreign commerce or trade of the United States, or the commerce or trade between the States and any Territory or the District of Columbia,

in any of the articles aforesaid, and no purchase of structural steel, ship plates, or machinery shall be made at a price in excess of a reasonable profit above the actual cost of manufacture. But this limitation shall in no case apply to any existing contract.

\* \* \* \* \*

[Public, No. 435. Approved Mar. 4, 1913. H. R. 28499.]

AN ACT Making appropriations to provide for the expenses of the government of the District of Columbia for the fiscal year ending June thirtieth, nineteen hundred and fourteen, and for other purposes.

\* \* \* \* \*

PAR. 54. That no franchise nor any right to or under any franchise to own or operate any public utility as defined in this section or to use the tracks of any street railroad shall be assigned, transferred, or leased, nor shall any contract or agreement with reference to or affecting any such franchise or right be valid or of any force or effect whatsoever unless the assignment, transfer, lease, contract, or agreement shall have been approved by the commission in writing. The permission and approval of the commission to the assignment, transfer, or lease of a franchise under this paragraph shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture.

It shall be unlawful for any street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or other public utility corporation, directly or indirectly, to acquire the stock or bonds of any other corporation incorporated for or engaged in the same or similar business as it is, unless authorized in writing to do so by the commission, and every contract, transfer, agreement for transfer or assignment of any such stock or bonds without such written authority shall be void and of no effect.

\* \* \* \* \*

PAR. 72. That the power to create lines on corporate property by public utilities in the District of Columbia is hereby declared to be a special privilege the right of supervision, regulation, restriction, and control of which is hereby vested in the public utilities commission of the

No public utility to acquire bonds or stock of others, unless.  
Liens to be supervised.

District of Columbia, and such power shall be exercised according to the provisions of this section.

Issuance of  
stocks, bonds.

PAR. 73. That no public utility shall hereafter issue any stocks, stock certificates, bonds, mortgages, or any other evidences of indebtedness payable in more than one year from date, until it shall have first obtained the certificate of the commission showing authority for such issue from the commission.

Certificate of  
commission  
necessary.

PAR. 74. That no public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness for money, property, or services, either directly or indirectly, nor shall it receive any money, property, or services in payment of the same, either directly or indirectly, until there shall have been recorded upon the books of such public utility the certificate of the commission in this section provided for.

No stock divi-  
dends.

PAR. 75. That no public utility shall declare any stock, bond, or scrip dividend or divide the proceeds of the sale of any stock, bond, or scrip among its stockholders.

No increase on  
reorganization.

PAR. 76. That no public utility shall issue any stocks, certificates of stock, bonds, or other evidences of indebtedness secured on its property in the District of Columbia for the purpose of any reorganization or consolidation in excess of the total amount of the stocks, certificates of stock, bonds, or other evidences of indebtedness then outstanding against the public utilities so reorganizing or consolidating, and no such public utility shall purchase the property of any other public utility for the purpose of effecting a consolidation until the commission shall have determined and set forth in writing that said consolidation will be in the public interest, nor until the commission shall have approved in writing the terms upon which said consolidation shall be made.

PAR. 77. That no public utility shall apply the proceeds of any such stock, certificates of stock, bonds, or other evidences of indebtedness to any other purpose or issue the same on any less favorable terms than that specified in the certificate issued by the commission.

Void issues.

PAR. 78. That all stocks, certificates of stock, bonds, and other evidences of indebtedness issued contrary to the provisions of this section shall be void.

\* \* \* \* \*

**RULES OF PRACTICE IN EQUITY, SUPREME COURT OF  
THE UNITED STATES.**

[Promulgated Nov. 4, 1912.]

73.

**PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING  
ORDERS.**

No preliminary injunction shall be granted without notice to the opposite party. Nor shall any temporary restraining order be granted without notice to the opposite party, unless it shall clearly appear from specific facts, shown by affidavit or by the verified bill, that immediate and irreparable loss or damage will result to the applicant before the matter can be heard on notice. In case a temporary restraining order shall be granted without notice, in the contingency specified, the matter shall be made returnable at the earliest possible time, and in no event later than ten days from the date of the order, and shall take precedence of all matters, except older matters of the same character. When the matter comes up for hearing the party who obtained the temporary restraining order shall proceed with his application for a preliminary injunction, and if he does not do so the court shall dissolve his temporary restraining order. Upon two days' notice to the party obtaining such temporary restraining order, the opposite party may appear and move the dissolution or modification of the order, and in that event the court or judge shall proceed to hear and determine the motion as expeditiously as the ends of justice may require. Every temporary restraining order shall be forthwith filed in the clerk's office.

Rules of Supreme Court.

74.

**INJUNCTION PENDING APPEAL.**

When an appeal from a final decree, in an equity suit, granting or dissolving an injunction, is allowed by a justice or a judge who took part in the decision of the cause, he may, in his discretion, at the time of such allowance, make an order suspending, modifying, or restoring the injunction during the pendency of the appeal, upon such terms, as to bond or otherwise, as he may consider proper for the security of the rights of the opposite party.

# CASES DECIDED UNDER THE SHERMAN LAW OR RELATING THERETO.

[See Federal Anti-Trust Decisions, 4 volumes.]

|   |                     |
|---|---------------------|
| Abner-Drury Brewing Co., Leonard <i>v.</i>              | 25 D. C. App., 161. |
| A. Booth & Co. <i>v.</i> Davis                          | 127 Fed., 875.      |
|   | 131 Fed., 31.       |
| Addyston Pipe & Steel Co., U. S. <i>v.</i>              | 78 Fed., 712.       |
|   | 85 Fed., 271.       |
|   | 175 U. S., 211.     |
| Agler, U. S. <i>v.</i>                                  | 62 Fed., 824.       |
| Alexander <i>v.</i> U. S.                               | 201 U. S., 117.     |
| Allen Bros. Tob. Co., R. J. Reynolds Tob. Co. <i>v.</i> | 151 Fed., 819.      |
| Aluminum Castings Co. <i>v.</i> Michigan Alumi-         |                     |
| num F. Co.  | 190 Fed., 879.      |
| American Banana Co. <i>v.</i> United Fruit Co.          | 153 Fed., 943.      |
|   | 160 Fed., 184.      |
|   | 166 Fed., 261.      |
|   | 213 U. S., 347.     |
| American Biscuit & Mfg. Co. <i>v.</i> Klotz             | 44 Fed., 721.       |
| American Brake Beam Co. <i>v.</i> Pungs                 | 141 Fed., 923.      |
| American Naval Stores Co., U. S. <i>v.</i>              | 172 Fed., 455.      |
|   | 186 Fed., 592.      |
| American Preservers' Co., Bishop <i>v.</i>              | 51 Fed., 272.       |
|   | 105 Fed., 845.      |
| American School Furniture Co., Metcalf <i>v.</i>        | 108 Fed., 909.      |
|   | 113 Fed., 1020.     |
|   | 122 Fed., 115.      |
| American Sugar Ref. Co., Pennsylvania Sugar             |                     |
| Ref. co. <i>v.</i>                                      | 160 Fed., 144.      |
|   | 166 Fed., 254.      |
| American Tel. & Tel. Co., Ames <i>v.</i>                | 166 Fed., 820.      |
| American Tob. Co., Larcus <i>v.</i>                     | 163 Fed., 712.      |
| American Tob. Co., Monarch Tob. Works <i>v.</i>         | 165 Fed., 774.      |
| American Tob. Co., People's Tob. Co. <i>v.</i>          | 170 Fed., 396.      |
| American Tob. Co., U. S., <i>v.</i>                     | 164 Fed., 700.      |
|   | 221 U. S., 106.     |
|   | 191 Fed., 371.      |
| American Tob. Co., U. S. Tob. Co. <i>v.</i>             | 163 Fed., 701.      |
| American Tob. Co., Ware-Kramer Tob. Co. <i>v.</i>       | 178 Fed., 117.      |
|   | 180 Fed., 160.      |
| American Tob. Co., Weisert Bros. Tob. Co. <i>v.</i>     | 163 Fed., 712.      |
| American Union Coal Co. <i>v.</i> Penna. R. Co.         | 159 Fed., 278.      |
| Ames <i>v.</i> American Tel. & Tel. Co.                 | 166 Fed., 820.      |
| Anderson, Shawnee Compress Co. <i>v.</i>                | 87 Pac., 315.       |
|   | 209 U. S., 423.     |
| Anderson <i>v.</i> United States                        | 82 Fed., 998.       |
|   | 171 U. S., 604.     |
| Arkansas Brokerage Co. <i>v.</i> Dunn & Powell          | 173 Fed., 899.      |
| Armour & Co., U. S. <i>v.</i>                           | 142 Fed., 808.      |
| Atchison, T. & S. F. Ry. Co. <i>v.</i> Prescott & A. C. |                     |
| Ry. Co.   | 73 Fed., 438.       |
|   | 84 Fed., 213.       |

|  |                 |
|--|-----------------|
| Atchison, T. & S. F. Ry. Co., U. S. v.....                                 | 142 Fed., 176.  |
| Barber Asphalt Paving Co., Field v.....                                    | 117 Fed., 925.  |
|  | 229 U. S., 1.   |
| Bauer & Cie v. O'Donnell.....  | 194 U. S., 618. |
| Bay (Cincinnati, Portsmouth, Big Sandy, and<br>Pomeroy Packet Co. v.)..... | 200 U. S., 179. |
| Beef Trust Cases. See U. S. v. Swift and<br>U. S. v. Armour.               |                 |
| Bement v. National Harrow Co.....  | 186 U. S., 70.  |
| Bigelow v. Calumet & Hecla Min. Co.....                                    | 155 Fed., 869.  |
|  | 167 Fed., 704.  |
|  | 167 Fed., 721.  |
| Bishop v. American Preservers' Co.....                                     | 51 Fed., 272.   |
|  | 105 Fed., 845.  |
| Blindell v. Hagan.....   | 54 Fed., 40.    |
|  | 56 Fed., 696.   |
| Block v. Standard Distilling & Distributing Co.                            | 95 Fed., 978.   |
| Blount Mfg. Co. v. Yale & Towne Mfg. Co.....                               | 166 Fed., 555.  |
| Board of Trade v. Christie Grain & S. Co.....                              | 116 Fed., 944.  |
|  | 121 Fed., 608.  |
|  | 125 Fed., 161.  |
|  | 198 U. S., 236. |
| Bobbs-Merrill Co. v. Straus.....   | 139 Fed., 155.  |
|  | 210 U. S., 339. |
| Booth & Co. v. Davis.....  | 127 Fed., 875.  |
|  | 131 Fed., 31.   |
| Bradley, Fonotipia Ltd. v.....   | 171 Fed., 951.  |
| Bradley, Victor Talking Mach. Co. v.....                                   | 171 Fed., 951.  |
| Buchanan, Foot v.....  | 113 Fed., 156.  |
| Callam, Northwestern Consol. Min. Co. v.....                               | 177 Fed., 786.  |
| Calumet & Hecla Min. Co., Bigelow v.....                                   | 155 Fed., 869.  |
|  | 167 Fed., 704.  |
|  | 167 Fed., 721.  |
| Camors-McConnell Co. v. McConnell.....                                     | 140 Fed., 412.  |
|  | 140 Fed., 987.  |
|  | 152 Fed., 321.  |
| Carter-Crume Co., Cravens v.....   | 92 Fed., 479.   |
| Carter-Crume Co. v. Peurrung.....  | 86 Fed., 439.   |
| Case, J. I., Threshing Mach. Co., Indiana Mfg.<br>Co. v.....               | 148 Fed., 21.   |
|  | 154 Fed., 365.  |
| Cassidy, United States v.....  | 67 Fed., 698.   |
| Central Coal & Coke Co. v. Hartman.....                                    | 111 Fed., 96.   |
| Central Railroad & Banking Co. of Ga.,<br>Clark v.....                     | 50 Fed., 338.   |
| Charles E. Wisewall, The.....  | 74 Fed., 802.   |
|  | 86 Fed., 671.   |
| Chattanooga Foundry & Pipe Works, City of<br>Atlanta v.....                | 101 Fed., 900.  |
|  | 127 Fed., 23.   |
|  | 203 U. S., 390. |
| Chesapeake & Ohio Fuel Co., U. S. v.....                                   | 105 Fed., 93.   |
|  | 115 Fed., 610.  |

|   |                 |
|---|-----------------|
| Chicago Wall Paper Mills v. General Paper Co. | 147 Fed., 491.  |
| Christie Grain & Stock Co., Board of Trade v. | 116 Fed., 444.  |
|   | 121 Fed., 608.  |
|   | 125 Fed., 161.  |
|   | 198 U. S., 236. |
| Cilley v. United Shoe Mach. Co.               | 152 Fed., 726.  |
| Cincinnati, N. O. & T. P. Ry. Co., Thomas v.  | 62 Fed., 808.   |
| Cincinnati, Portsmouth, Big Sandy & Pomeroy   |                 |
| Packet Co. v. Bay                             | 200 U. S., 179. |
| City of Atlanta v. Chattanooga Foundry &      |                 |
| Pipe Works                                    | 101 Fed., 909.  |
|   | 127 Fed., 23.   |
|   | 203 U. S., 390. |
| Clabaugh v. Southern Wholesale Grocers'       |                 |
| Ass'n   | 181 Fed., 706.  |
| Clarke v. Central R. R. & Banking Co. of Ga.  | 50 Fed., 338.   |
| Cole Transp. Co. v. White Star Line           | 186 Fed., 63.   |
| Coal Dealers' Ass'n of Calif., U. S. v.       | 85 Fed., 252.   |
| Comer, Waterhouse v.                          | 55 Fed., 149.   |
| Connolly, Union Sewer-Pipe Co. v.             | 99 Fed., 354.   |
|   | 184 U. S., 540. |
| Continental Tobacco Co., Whitewell v.         | 125 Fed., 454.  |
| Continental Wall Paper Co. v. Voight          | 148 Fed., 939.  |
|   | 212 U. S., 227. |
| Corning, In re                                | 51 Fed., 205.   |
| Cravens v. Carter-Crume Co.                   | 92 Fed., 479.   |
| Creamery Package Mfg. Co., Virtue v.          | 179 Fed., 115.  |
| Danbury Hatters' Case. See Loewe v. Lawlor.   |                 |
| Darius Cole Transp. Co. v. White Star Line    | 186 Fed., 63.   |
| Davis et al., A. Booth & Co. v.               | 127 Fed., 875.  |
|   | 131 Fed., 31.   |
| Debs, United States v.                        | 64 Fed., 724.   |
| Debs, In re                                   | 158 U. S., 564. |
| Delaware, L. & W. R. Co. v. Frank             | 110 Fed., 689.  |
| Delaware, L. & W. R. Co. v. Kutter            | 147 Fed., 51.   |
| D. E. Loewe & Co. v. Lawlor                   | 130 Fed., 633.  |
|   | 142 Fed., 216.  |
|   | 148 Fed., 924.  |
|   | 208 U. S., 283. |
| Dennehy v. McNulta                            | 86 Fed., 825.   |
|   | 77 Fed., 900.   |
| Dr. Miles Med. Co. v. Jaynes Drug Co.         | 149 Fed., 838.  |
| Dr. Miles Med. Co. v. Park                    | 164 Fed., 803.  |
|   | 220 U. S., 373. |
| Dueber Watch Case Mfg. Co. v. Howard Watch    |                 |
| & Clock Co.                                   | 55 Fed., 851.   |
|   | 66 Fed., 637.   |
| Dunn & Powell v. Arkansas Brokerage Co.       | 173 Fed., 899.  |
| Du Pont de Nemours & Co. v. U. S.             | 188 Fed., 127.  |
| Eastman Kodak Co., Loeb v.                    | 183 Fed., 704.  |
| E. C. Knight Co., U. S. v.                    | 60 Fed., 306.   |
|   | 60 Fed., 934.   |
|   | 156 U. S., 1.   |



|   |                 |
|---|-----------------|
| <b>E Howard Watch &amp; Clock Co., Dueber Watch</b>                     |                 |
| Case Mfg. Co. <i>v</i> -----  | 55 Fed., 851.   |
|   | 56 Fed., 637.   |
| <b>Elliott, United States <i>v</i></b> -----                            | 62 Fed., 801.   |
|   | 64 Fed., 27.    |
| <b>Ellis <i>v</i>. Inman, Poulsen &amp; Co</b> -----                    | 124 Fed., 956.  |
|   | 131 Fed., 182.  |
| <b>Evans <i>v</i>. Lowenstein</b> -----                                 | 69 Fed., 908.   |
| <b>Farmers' Loan &amp; Trust Co. <i>v</i>. Northern Pac.</b>            |                 |
| R. R. Co.-----  | 60 Fed., 803.   |
| <b>Field <i>v</i>. Barber Asphalt &amp; Paving Co</b> -----             | 117 Fed., 925.  |
|   | 194 U. S., 618. |
| <b>Fonotipia Ltd. <i>v</i>. Bradley</b> -----                           | 171 Fed., 951.  |
| <b>Foot <i>v</i>. Buchanan</b> -----                                    | 113 Fed., 156.  |
| <b>Frank (Delaware, L. &amp; W. R. Co. <i>v</i>.)</b> -----             | 110 Fed., 689.  |
| <b>Geiger, Otis Elevator <i>v</i></b> -----                             | 107 Fed., 131.  |
| <b>General Electric Co. <i>v</i>. Wise</b> -----                        | 119 Fed., 922.  |
| <b>General Paper Co. <i>v</i>. Chicago Wall Paper</b>                   |                 |
| Mills-----  | 147 Fed., 491.  |
| <b>Gibbs <i>v</i>. McNeeley (Shingle Trust)</b> -----                   | 102 Fed., 594.  |
|   | 107 Fed., 210.  |
|   | 118 Fed., 120.  |
| <b>Goshen Rubber Works <i>v</i>. Single Tube Auto. &amp;</b>            |                 |
| Bicycle Tire Co-----  | 166 Fed., 431.  |
| <b>Grand Jury, In re</b> -----  | 62 Fed., 840.   |
| <b>Grand Jury, In re charge to</b> -----                                | 151 Fed., 834.  |
| <b>Green, In re</b> -----   | 52 Fed., 104.   |
| <b>Greenhut, United States <i>v</i></b> -----                           | 50 Fed., 469.   |
| <b>Greer, Mills &amp; Co. <i>v</i>. Stoller</b> -----                   | 77 Fed., 1.     |
| <b>Griffin &amp; Skelly Co., U. S. Consol. S. R. Co. <i>v</i></b> ----- | 126 Fed., 364.  |
| <b>Gulf, C. &amp; S. F. Ry. Co. <i>v</i>. Miami S. S. Co</b> -----      | 86 Fed., 407.   |
| <b>Hadley Dean Plate Glass Co. <i>v</i>. Highland</b>                   |                 |
| Glass Co-----   | 143 Fed., 242.  |
| <b>Hagan, Blindell <i>v</i></b> -----                                   | 54 Fed., 40.    |
|   | 56 Fed., 696.   |
| <b>Hale, In re</b> -----  | 139 Fed., 496.  |
| <b>Hale <i>v</i>. Henkel</b> -----                                      | 201 U. S., 43.  |
| <b>Hale <i>v</i>. O'Connor Coal &amp; Sup. Co</b> -----                 | 181 Fed., 267.  |
| <b>Harriman <i>v</i>. Northern Securities Co</b> -----                  | 132 Fed., 464.  |
|   | 134 Fed., 331.  |
|   | 197 U. S., 244. |
| <b>Harrington, Pidcock <i>v</i></b> -----                               | 64 Fed., 821.   |
| <b>Hartman, Central Coal &amp; Coke Co. <i>v</i></b> -----              | 111 Fed., 96.   |
| <b>Hartman <i>v</i>. John D. Parks &amp; Sons Co</b> -----              | 145 Fed., 358.  |
|   | 153 Fed., 24.   |
| <b>Heike, United States <i>v</i></b> -----                              | 175 Fed., 852.  |
|   | 217 U. S., 423. |
| <b>Hench, National Harrow Co. <i>v</i></b> -----                        | 76 Fed., 667.   |
|   | 83 Fed., 36.    |
|   | 84 Fed., 22.    |
| <b>Henkel, Hale <i>v</i></b> -----                                      | 201 U. S., 43.  |
| <b>Henkel, McAlister <i>v</i></b> -----                                 | 201 U. S., 90.  |
| <b>Highland Glass Co., Hadley Dean Plate Glass</b>                      |                 |
| Co. <i>v</i> -----  | 143 Fed., 242.  |

|  |                 |
|--|-----------------|
| Hocking Valley Ry. Co., Mannington <i>v</i> -----          | 183 Fed., 133.  |
| Hopkins, United States <i>v</i> -----                      | 82 Fed., 529.   |
|  | 84 Fed., 1018.  |
|  | 171 U. S., 578. |
| Howard Watch & Clock Co., Dueber Watch                     |                 |
| Case Mfg. Co. <i>v</i> -----                               | 55 Fed., 851.   |
|  | 66 Fed., 637.   |
| In re Corning-----   | 51 Fed., 205.   |
| In re Debs, Petitioner-----                                | 158 U. S., 564. |
| U. S. <i>v</i> . Debs-----                                 | 64 Fed., 724.   |
| In re Grand Jury-----                                      | 62 Fed., 840.   |
| In re Grand Jury—charge to-----                            | 151 Fed., 834.  |
| In re Green-----   | 52 Fed., 104.   |
| In re Hale-----  | 139 Fed., 496.  |
| Hale <i>v</i> . Henkel-----                                | 201 U. S., 43.  |
| In re Kittle-----  | 180 Fed., 946.  |
| In re Terrell-----   | 51 Fed., 213.   |
| Indiana Mfg. Co. <i>v</i> . J. I. Case Threshing Mach.     |                 |
| Co.-----   | 148 Fed., 21.   |
|  | 154 Fed., 365.  |
| Inman, Poulsen & Co., Ellis <i>v</i> -----                 | 124 Fed., 956.  |
|  | 131 Fed., 182.  |
| Iola Portland Cement Co., Phillips <i>v</i> -----          | 125 Fed., 593.  |
| Jayne, Loder <i>v</i> -----                                | 142 Fed., 1010. |
|  | 149 Fed., 21.   |
| Jaynes Drug Co., Dr. Miles Med. Co. <i>v</i> -----         | 149 Fed., 838.  |
| Jellico Mountain Coke & Coal Co., U. S. <i>v</i> -----     | 43 Fed., 898.   |
|  | 46 Fed., 432.   |
| J. I. Case Threshing Mach. Co., Indiana Mfg.               |                 |
| Co. <i>v</i> -----   | 148 Fed., 21.   |
|  | 154 Fed., 365.  |
| John D. Parks & Sons Co., Hartman <i>v</i> -----           | 154 Fed., 895.  |
|  | 153 Fed., 24.   |
| Joint Traffic Association, U. S. <i>v</i> -----            | 76 Fed., 895.   |
|  | 89 Fed., 1020.  |
|  | 171 U. S., 505. |
| Kinsey Co. <i>v</i> . Board of Trade-----                  | 198 U. S., 236. |
| Kissell, United States <i>v</i> -----                      | 173 Fed., 823.  |
|  | 218 U. S., 601. |
| Kittle, In re-----   | 180 Fed., 946.  |
| Klotz, American Biscuit & Mfg. Co. <i>v</i> -----          | 44 Fed., 721.   |
| Knight Co., United States <i>v</i> -----                   | 60 Fed., 306.   |
|  | 60 Fed., 934.   |
|  | 156 U. S., 1.   |
| Kutter, Delaware, L. & W. R. Co. <i>v</i> -----            | 147 Fed., 51.   |
| Laemuile et al., Motion Picture Patents Co. <i>v</i> ----- | 178 Fed., 104.  |
| Larcus <i>v</i> . American Tob. Co-----                    | 163 Fed., 712.  |
| Lawlor, Loewe <i>v</i> -----                               | 130 Fed., 633.  |
|  | 142 Fed., 216.  |
|  | 148 Fed., 924.  |
|  | 187 Fed., 522.  |
|  | 208 U. S., 283. |

|  |                     |
|--|---------------------|
| Lehigh Valley R. Co., Meeker et al. v. ....      | 162 Fed., 354.      |
|  | 183 Fed., 548.      |
| Leonard v. Abner-Drury Brewing Co. ....          | 25 D. C. App., 161. |
| Licorice Paste Trust. See U. S. v. MacAn-        |                     |
| drews & Forbes Co. ....                          |                     |
| Loder v. Jayne .....                             | 142 Fed., 1010.     |
|  | 149 Fed., 21.       |
| Loeb v. Eastman Kodak Co. ....                   | 183 Fed., 704.      |
| Loewe v. Lawlor .....                            | 130 Fed., 633.      |
|  | 142 Fed., 216.      |
|  | 148 Fed., 924.      |
|  | 187 Fed., 522.      |
|  | 208 U. S., 283.     |
| Lowenstein v. Evans .....                        | 69 Fed., 908.       |
| Lowry v. Tile, Mantel & Grate Ass'n .....        | 98 Fed., 817.       |
|  | 106 Fed., 38.       |
| Lowry, W. W. Montague & Co. v. ....              | 115 Fed., 27.       |
|  | 193 U. S., 38.      |
| McAlister v. Henkel .....                        | 201 U. S., 90.      |
| MacAndrews & Forbes Co., U. S. v. ....           | 149 Fed., 823.      |
|  | 212 U. S., 585.     |
| McConnell, Camors-McConnell Co. v. ....          | 140 Fed., 412.      |
|  | 140 Fed., 987.      |
|  | 152 Fed., 321.      |
| McNeeley, Gibbs v. ....                          | 102 Fed., 594.      |
|  | 107 Fed., 210.      |
|  | 118 Fed., 120.      |
| McNulta, Dennehy v. ....                         | 86 Fed., 825.       |
| Mannington v. Hocking Valley Ry. Co. et al. .... | 183 Fed., 133.      |
| Meeker et al. v. Lehigh Valley R. Co. ....       | 162 Fed., 354.      |
|  | 183 Fed., 548.      |
| Metcalf v. American School Furniture Co. ....    | 108 Fed., 909.      |
|  | 113 Fed., 1020.     |
|  | 122 Fed., 115.      |
| Miami S. S. Co., Gulf C. & S. F. Ry. Co. v. .... | 86 Fed., 407.       |
| Michigan Aluminum F. Co. v. Aluminum Cast-       |                     |
| ings Co. ....                                    | 190 Fed., 879.      |
| Miles Medical Co. v. Park & Sons Co. ....        | 220 U. S., 373.     |
| Milwaukee Rubber Works, Rubber Tire Wheel        |                     |
| Co. v. ....                                      | 142 Fed., 531.      |
|  | 154 Fed., 358.      |
| Mines v. Scribner .....                          | 147 Fed., 927.      |
| Minnesota v. Northern Securities Co. ....        | 123 Fed., 692.      |
|  | 194 U. S., 48.      |
| Monarch Tob. Works v. American Tob. Co. ....     | 165 Fed., 774.      |
| Montague & Co. v. Lowry .....                    | 115 Fed., 27.       |
|  | 193 U. S., 38.      |
| Moore v. United States .....                     | 85 Fed., 465.       |
| Motion Picture Patents Co. v. Laemmle .....      | 178 Fed., 104.      |
| Motion Picture Patents Co. v. Ullman .....       | 186 Fed., 174.      |
| Nash v. U. S. ....                               | 229 U. S., 373.     |
| National Folding-Box & Paper Co. v. Robert-      |                     |
| son .....  | 99 Fed., 985.       |

|  |                 |
|--|-----------------|
| National Harrow Co. <i>v.</i> Hensch                                   | 76 Fed., 667.   |
|  | 83 Fed., 36.    |
|  | 84 Fed., 226.   |
| National Harrow Co. <i>v.</i> Quick                                    | 67 Fed., 130.   |
|  | 74 Fed., 443.   |
| National Harrow Co., Bement <i>v.</i>                                  | 186 U. S., 70.  |
| National Harrow Co., Strait <i>v.</i>                                  | 51 Fed., 819.   |
| National Window Glass Jobbers' Ass'n, Wheeler<br>Stenzel Co. <i>v.</i> | 152 Fed., 864.  |
| Nelson, United States <i>v.</i>  | 52 Fed., 646.   |
| Nelson <i>v.</i> United States   | 201 U. S., 92.  |
| Northern Securities Co., Harriman <i>v.</i>                            | 132 Fed., 464.  |
|  | 134 Fed., 331.  |
|  | 197 U. S., 244. |
| Northern Securities Co., U. S. <i>v.</i>                               | 120 Fed., 721.  |
|  | 193 U. S., 197. |
| Northern Securities Co., Minnesota <i>v.</i>                           | 123 Fed., 692.  |
|  | 194 U. S., 48.  |
| Northwestern Consol. Min. Co. <i>v.</i> Wm. Callam<br>& Son            | 177 Fed., 786.  |
| O'Connor Coal & Sup. Co., Hale <i>v.</i>                               | 181 Fed., 267.  |
| O'Donnell, Bauer & Cie <i>v.</i>                                       | 229 U. S., 1.   |
| Otis Elevator Co. <i>v.</i> Geiger                                     | 107 Fed., 131.  |
| Pacific & Arctic Co., U. S. <i>v.</i>                                  | 228 U. S., 87.  |
| Park & Sons Co., Dr. Miles Med. Co. <i>v.</i>                          | 164 Fed., 803.  |
|  | 220 U. S., 373. |
| Park, John D., & Sons Co., Hartman <i>v.</i>                           | 145 Fed., 358.  |
|  | 153 Fed., 24.   |
| Patten, U. S. <i>v.</i>  | 187 Fed., 664.  |
| Patterson, United States <i>v.</i>                                     | 55 Fed., 605.   |
|  | 59 Fed., 280.   |
| Penna. R. Co., American Union Coal Co. <i>v.</i>                       | 159 Fed., 278.  |
| Penna. Sugar Ref. Co. <i>v.</i> American Sugar Ref.<br>Co              | 160 Fed., 144.  |
|  | 166 Fed., 254.  |
| People's Tob. Co. <i>v.</i> American Tob. Co.                          | 170 Fed., 396.  |
| Peurrung, Carter-Crume Co. <i>v.</i>                                   | 86 Fed., 439.   |
| Phillips <i>v.</i> Portland Cement Co                                  | 125 Fed., 593.  |
| Pidcock <i>v.</i> Harrington   | 64 Fed., 821.   |
| Prescott & A. C. R. Co. <i>v.</i> Atchison, T. & S. F.<br>R. Co        | 73 Fed., 438.   |
|  | 84 Fed., 213.   |
| Pungs, American Brake Beam Co. <i>v.</i>                               | 141 Fed., 923.  |
| Quick, National Harrow Co. <i>v.</i>                                   | 67 Fed., 130.   |
|  | 74 Fed., 236.   |
| R. J. Reynolds Tob. Co. <i>v.</i> Allen Bros. Tob.<br>Co               | 151 Fed., 819.  |
| Reading Company, U. S. <i>v.</i>                                       | 183 Fed., 427.  |
| Reardon & Sons Co., John, <i>v.</i> U. S.                              | 191 Fed., 454.  |
| Rice <i>v.</i> Standard Oil Company                                    | 134 Fed., 464.  |
| Robertson <i>v.</i> National Folding-Box & Paper<br>Co                 | 99 Fed., 985.   |
| Robinson <i>v.</i> Suburban Brick Co                                   | 127 Fed., 804.  |

|  |  |
|--|--|
| Rubber Tire Wheel Co. <i>v.</i> Milwaukee Rubber Works Co-----   | 142 Fed., 531.                           |
|  | 154 Fed., 358.                           |
| Scribner, Mines <i>v.</i> -----  | 147 Fed., 927.                           |
| Shawnee Compress Co. <i>v.</i> Anderson-----   | 87 Pac., 315.                            |
|  | 209 U. S., 423.                          |
| Shingle Trust. See Gibbs <i>v.</i> McNulta.  |  |
| Single Tube Auto. & Bicycle Tire Co., Goshen Rubber Works <i>v.</i> -----  | 166 Fed., 431.                           |
| Southern Indiana Exp. Co. <i>v.</i> United States Exp. Co-----   | 88 Fed., 659.                            |
|  | 92 Fed., 1022.                           |
| Southern Railway, Tift <i>v.</i> -----   | 138 Fed., 753.                           |
| Southern Wholesale Grocers' Ass'n, Cla-<br>baugh <i>v.</i> -----   | 181 Fed., 706.                           |
| Standard Distilling & Distributing Co.,<br>Block <i>v.</i> -----   | 95 Fed., 978.                            |
| Standard Oil Company, Rice <i>v.</i> -----   | 134 Fed., 464.                           |
| Standard Oil Co. of New Jersey, U. S. <i>v.</i> -----  | 152 Fed., 290.                           |
|  | 173 Fed., 177.                           |
|  | 221 U. S., 1.                            |
| Standard Sanitary Mfg. Co. <i>v.</i> U. S.-----  | 191 Fed., 172.                           |
| State of Minnesota <i>v.</i> Northern Securities Co-----   | 123 Fed., 692.                           |
|  | 194 U. S., 48.                           |
| Steers et al. <i>v.</i> U. S.-----   | 192 Fed., 1.                             |
| Stoller (Greer, Mills & Co. <i>v.</i> )-----   | 77 Fed., 1.                              |
| Strait <i>v.</i> National Harrow Co-----   | 51 Fed., 819.                            |
| Straus, Bobbs-Merrill Co. <i>v.</i> -----  | 139 Fed., 155.                           |
|  | 210 U. S., 339.                          |
| Strauss et al. <i>v.</i> American Publishers' Ass'n-----   | U. S. Supreme<br>Court, Dec. 1,<br>1913. |
| Strout <i>v.</i> United Shoe Machinery Co-----   | 195 Fed., 313.                           |
| Suburban Brick Co., Robinson <i>v.</i> -----   | 127 Fed., 804.                           |
| Swift & Co., United States <i>v.</i> -----   | 122 Fed., 529.                           |
|  | 188 Fed., 92.                            |
|  | 196 U. S., 375.                          |
| Terminal Railroad Ass'n of St. Louis, U. S. <i>v.</i> -----  | 224 U. S., 383.                          |
| Terrell, In re-----  | 51 Fed., 213.                            |
| Thomas <i>v.</i> Cin., N. O. & T. P. Ry. Co-----   | 62 Fed., 803.                            |
| Thomson <i>v.</i> Union Castle Mail S. S. Co-----  | 149 Fed., 933.                           |
|  | 166 Fed., 251.                           |
| Tift <i>v.</i> Southern Ry Co-----   | 138 Fed., 753.                           |
| Tile, Mantel & Grate Ass'n <i>v.</i> Lowry-----  | 98 Fed., 817.                            |
|  | 106 Fed., 38.                            |
| Tobacco Trust Cases. See U. S. <i>v.</i> American<br>Tobacco Co., Hale <i>v.</i> Henkel, McAlister <i>v.</i><br>Henkel, and U. S. <i>v.</i> MacAndrews & Forbes<br>Co. |  |
| Trans-Missouri Freight Ass'n, U. S. <i>v.</i> -----  | 53 Fed., 440.                            |
|  | 58 Fed., 58.                             |
|  | 166 U. S., 290.                          |
| Tribolet, United States <i>v.</i> -----  | 95 Pac., 85.                             |
| Ullman, Motion Picture Patents Co. <i>v.</i> -----   | 186 Fed., 174.                           |

|   |                 |
|---|-----------------|
| Union Castle Mail S. S. Co., Thomson <i>v</i> -----   | 149 Fed., 933.  |
|   | 166 Fed., 251.  |
| Union Pacific Coal Co. <i>v</i> . U. S.-----  | 173 Fed., 737.  |
| Union Pacific R. R. Co. <i>v</i> . U. S.-----   | 188 Fed., 102.  |
| Union Sewer-Pipe Co. <i>v</i> . Connolly-----   | 99 Fed., 354.   |
|   | 184 U. S., 540. |
| United Fruit Co., American Banana Co. <i>v</i> -----  | 153 Fed., 943.  |
|   | 160 Fed., 184.  |
|   | 166 Fed., 261.  |
|   | 213 U. S., 347. |
| United Shoe Mach. Co., Cilley <i>v</i> -----  | 152 Fed., 726.  |
| United Shoe Mach. Co. <i>v</i> . Strout-----  | 195 Fed., 313.  |
| U. S. <i>v</i> . Addyston Pipe & Steel Co-----  | 78 Fed., 712.   |
|   | 85 Fed., 271.   |
|   | 175 U. S., 211. |
| U. S. <i>v</i> . Agler-----   | 62 Fed., 824.   |
| U. S. <i>v</i> . American Naval Stores Co-----  | 172 Fed., 455.  |
|   | 186 Fed., 592.  |
| U. S. <i>v</i> . American Tobacco Co-----   | 164 Fed., 700.  |
|   | 221 U. S., 106. |
|   | 191 Fed., 371.  |
| U. S. <i>v</i> . Armour & Co-----   | 142 Fed., 808.  |
| U. S. <i>v</i> . Atchison, T. & S. F. Ry. Co-----   | 142 Fed., 176.  |
| U. S. <i>v</i> . Cassidy-----   | 67 Fed., 698.   |
| U. S. <i>v</i> . Chesapeake & Ohio Fuel Co-----   | 105 Fed., 93.   |
|   | 115 Fed., 610.  |
| U. S. <i>v</i> . Coal Dealers' Assn. of Calif-----  | 85 Fed., 252.   |
| U. S. <i>v</i> . Debs-----  | 64 Fed., 724.   |
| <i>In re</i> Debs-----  | 158 U. S., 564. |
| U. S., <i>v</i> . Du Pont de Nemours & Co-----  | 188 Fed., 127.  |
| U. S. <i>v</i> . E. C. Knight Co-----   | 60 Fed., 306.   |
|   | 60 Fed., 934.   |
|   | 156 U. S., 1.   |
| U. S. <i>v</i> . Elliott-----   | 62 Fed., 801.   |
|   | 64 Fed., 27.    |
| U. S. <i>v</i> . Freight Association. (See U. S. <i>v</i> .<br>Trans-Missouri Freight Association.) |                 |
| U. S. <i>v</i> . General Paper Co. (See Nelson <i>v</i> .<br>U. S. and Alexander <i>v</i> . U. S.)  |                 |
| U. S. <i>v</i> . Greenhut-----  | 50 Fed., 469.   |
| U. S. <i>v</i> . Heike-----   | 175 Fed., 852.  |
|   | 217 U. S., 423. |
| U. S. <i>v</i> . Hopkins-----   | 82 Fed., 529.   |
|   | 84 Fed., 1018.  |
|   | 171 U. S. 578.  |
| U. S. Jellico Mountain Coke & Coal Co-----  | 43 Fed., 898.   |
|   | 46 Fed., 432.   |
| U. S. <i>v</i> . Joint Traffic Association-----   | 76 Fed., 895.   |
|   | 89 Fed., 1020.  |
|   | 171 U. S., 505. |
| U. S. <i>v</i> . Kissell-----   | 173 Fed., 823.  |
|   | 218 U. S., 601. |
| U. S. <i>v</i> . MacAndrews & Forbes Co-----  | 149 Fed., 823.  |
|   | 212 U. S., 585. |
| U. S. <i>v</i> . Nash-----  | 229 U. S. 373.  |

|  |                    |
|--|--------------------|
| U. S. v. Nelson.....                                       | 52 Fed., 646.      |
| Nelson v. United States.....                               | 201 U. S., 92.     |
| U. S. v. Northern Securities Company.....                  | 120 Fed., 721.     |
|  | 193 U. S., 197.    |
| U. S. v. Pacific & Arctic Company.....                     | 228 U. S., 87.     |
| U. S. v. Patten.....                                       | 187 Fed., 664.     |
|  | 226 U. S., 525.    |
| U. S. v. Patterson.....                                    | 55 Fed., 605.      |
|  | 59 Fed., 280.      |
| U. S. v. Reading Company.....                              | 183 Fed., 427.     |
|  | 226 U. S., 324.    |
|  | 228 U. S., 158.    |
| U. S. v. John Reardon & Sons Co.....                       | 191 Fed., 454.     |
| U. S. v. Standard Oil Co. of New Jersey.....               | 152 Fed., 290.     |
|  | 173 Fed., 177.     |
|  | 221 U. S., 1.      |
| U. S. v. Standard Sanitary Mfg. Co.....                    | 191 Fed., 172.     |
|  | 226 U. S., 20.     |
| U. S. v. Steers et al.....                                 | 192 Fed., 1.       |
| U. S. v. Swift & Co.....                                   | 122 Fed., 529.     |
|  | 188 Fed., 92.      |
|  | 196 U. S., 375.    |
| U. S. v. Trans-Missouri Freight Ass'n.....                 | 53 Fed., 440.      |
|  | 58 Fed., 58.       |
|  | 166 U. S., 290.    |
| U. S. v. Tribolet.....                                     | 95 Pac., 85.       |
| U. S. v. Virginia-Carolina Chemical Co.....                | 163 Fed., 66.      |
| U. S. v. Winslow et al.....                                | 195 Fed., 578.     |
|  | 227 U. S., 202.    |
| U. S. v. Workingmen's Amalgamated Council.....             | 54 Fed., 994.      |
|  | 57 Fed., 85.       |
| U. S., Alexander v.....                                    | 201 U. S., 117.    |
| U. S., Anderson v.....                                     | 82 Fed., 998.      |
|  | 171 U. S., 604.    |
| U. S., Moore v.....  | 85 Fed., 465.      |
| U. S., Union Pacific Coal Co. v.....                       | 173 Fed., 737.     |
| U. S., Union Pacific R. R. Co. v.....                      | 188 Fed., 102.     |
|  | 226 U. S., 61-470. |
| U. S. Consolidated S. R. Co. v. Griffin-<br>Skelly Co..... | 126 Fed., 364.     |
| U. S. Exp. Co., Southern Ind. Exp. Co. v.....              | 88 Fed., 659.      |
|  | 92 Fed., 1022.     |
| United States Tob. Co. v. American Tob. Co.....            | 163 Fed., 712.     |
| Victor Talking Mach. Co. v. Bradley.....                   | 171 Fed., 951.     |
| Virginia-Carolina Chemical Co. v. U. S.....                | 163 Fed., 66.      |
| Virtue v. Creamery Package Mfg. Co.....                    | 179 Fed., 115.     |
|  | 227 U. S., 8.      |
| Voight, Continental Wall Paper Co. v.....                  | 148 Fed., 939.     |
|  | 212 U. S., 227.    |
| Ware-Kramer Tob. Co. v. American Tob. Co.....              | 178 Fed., 117.     |
|  | 180 Fed., 160.     |
| Waterhouse v. Comer.....                                   | 55 Fed., 149.      |
| Weisert Bros. Tob. Co. v. American Tob. Co.....            | 163 Fed., 712.     |

|  |                |
|--|----------------|
| Wheeler Stenzel Co. v. National Window Glass |                |
| Jobbers' Ass'n                               | 152 Fed., 864. |
| White Star Line, Cole Transp. Co. v.         | 186 Fed., 63.  |
| Whitwell v. Continental Tob. Co.             | 125 Fed., 454. |
| Winslow et al. v. U. S.                      | 195 Fed., 578. |
| Wise, General Electric Co. v.                | 119 Fed., 922. |
| Wisewall, The Charles E.                     | 74 Fed., 802.  |
|  | 86 Fed., 671.  |
| Workingmen's Amalgamated Council, U. S. v.   | 54 Fed., 994.  |
|  | 57 Fed., 85.   |
| Yale & Towne Mfg. Co., Blount Mfg. Co. v.    | 166 Fed., 555. |

NOTE.—Owing to the fact that there are four volumes of anti-trust decisions in print and full table of cases has been given above, only a few illustrative cases of leading propositions are here separately cited. Some very late cases are digested.—*Compiler*.

### RESALE CONTRACTS.

#### PRICE FIXING.

|  |                                    |
|--|------------------------------------|
| United States v. Greenhut et al.             | 51 Fed., 205.                      |
| United States v. Greenhut et al.             | 51 Fed., 213.                      |
| American Soda-Fountain Co. v. Green et al.   | 69 Fed., 333.                      |
| Henry v. A. B. Dick Co.                      | 223 U. S., 6.                      |
| Bobbs-Merrill Co. v. Strauss et al.          | 210 U. S., 339.                    |
| Bauer & Cie. v. O'Donnell                    | 229 U. S., 1.                      |
| Dr. Miles Medical Co. v. Park & Sons Co.     | 220 U. S., 373.                    |
| Strauss et al. v. American Publishers' Ass'n | Supreme Court U. S., Dec. 1, 1913. |

|                                     |                 |
|-------------------------------------|-----------------|
| Bobbs-Merrill Co. v. Strauss et al. | 210 U. S., 339. |
|-------------------------------------|-----------------|

#### STATEMENT.

This action arose under a resale price fixing notice printed in a copyright book stating that any sale at a less price will be treated as in infringement of the copyright.

#### OPINION.

There are differences between the patent, and the copyright, statutes in the extent of the protection granted by them. The sole right to vend granted by section 4952, Revised Statutes, does not secure to the owner of the copyright the right to qualify future sales by his vendee or to limit or restrict such future sales at a specified price, and a notice in the book that a sale at a different price will be treated as an infringement is ineffectual as against one not bound by contract or license agreement.

Price fixing under copyright law ineffectual.

|  |                 |
|--|-----------------|
| Dr. Miles Medical Co. v. Park & Sons Co. | 220 U. S., 373. |
|--|-----------------|



## STATEMENT.

The Dr. Miles Medical Co. had an elaborate resale and price-fixing contract for their medicines, and this action was to enjoin defendant from cutting the price or urging others so to do or from "advertising, selling, or offering for sale the remedies obtained," by means at less "than the established retail price thereof."

## OPINION.

A system of contracts between manufacturers and wholesale and retail merchants by which the manufacturers attempt to control not merely the prices at which its agents may sell its products, but the prices for all sales by all dealers at wholesale or retail, whether purchasers or subpurchasers, eliminating all competition and fixing the amount which the consumer shall pay, amounts to restraint of trade, and is invalid both at common law and, so far as it affects interstate commerce, under the Sherman Antitrust Act of July 2, 1890; and so held as to the contracts involved in this case.

Manufacturer may not fix prices of resale.

A manufacturer of unpatented articles can not by rule or notice, in absence of statutory right, fix prices for future sales, even though the restrictions be known to purchasers. Whatever rights the manufacturer may have in that respect must be by agreements that are lawful.

Although the earlier common-law doctrine in regard to restraint of trade has been substantially modified, the public interest is still the first consideration; to sustain the restraint it must be reasonable as to the public and parties and limited to what is reasonably necessary, under the circumstances, for the covenantee; otherwise restraints are void as against public policy.

Agreements or combinations between dealers having for their sole purpose the destruction of competition and fixing of prices are injurious to the public interests and void; nor are they saved by advantages which the participants expect to derive from the enhanced price to the consumer.

---

Bauer & Cie. v. O'Donnell.....229 U. S., 1.

## STATEMENT.

A patented article was resold by the defendant at less than the price fixed in a notice printed on the same by the manufacturer.

## OPINION.

Patentee may  
not fix resale  
price.

A patentee may not by notice limit the price at which future retail sales of the patented article may be made, such article being in the hands of the retailer by purchase from a jobber who has paid to the agent of the patentee the full price asked for the article sold.

Where the transfer of the patented article is full and complete an attempt to reserve the right to fix the price at which it shall be resold by the vendee is futile under the statute. It is not a license for qualified use, but an attempt to unduly extend the right to vend.

These last three cases (*Bobbs-Merrill Co. v. Strauss*, 210 U. S., 339; *Dr. Miles Medical Co. v. Park & Sons Co.*, 220 U. S., 373, and *Bauer v. O'Donnell*, 229 U. S., 1) form a distinct trinity and express the views of the Supreme Court of the United States under existing law on the subject of resale and price-fixing and price-maintenance contracts. The *Bobbs-Merrill* case relates to copyrighted articles, while the *Dr. Miles* case relates to unpatented articles entering into interstate commerce, and the *O'Donnell* case applies to patented articles. These cases cover the whole subject of price-fixing contracts.

## LABOR CASES.

|  |                     |
|--|---------------------|
| United States <i>v.</i> Workingmen's Amalgamated |                     |
| Council of New Orleans et al.....                | 54 Fed., 994.       |
| Waterhouse et al <i>v.</i> Comer.....            | 55 Fed., 149.       |
| United States <i>v.</i> Debs et al.....          | 64 Fed., 724.       |
| United States <i>v.</i> Agler.....               | 62 Fed. Rep., 82.   |
| United States <i>v.</i> Elliott.....             | 62 Fed. Rep., 801;  |
|  | 64 Fed. Rep., 27.   |
| United States <i>v.</i> Debs et al.....          | 64 Fed. Rep., 724.  |
| United States <i>v.</i> Cassidy.....             | 67 Fed. Rep., 698.  |
| In re Debs, Petitioner.....                      | 158 U. S., 564.     |
| Loewe <i>v.</i> Lawlor.....                      | 208 U. S., 274.     |
| See also   |                     |
| Commonwealth <i>v.</i> Hunt.....                 | 4 Metcalf's Rep.,   |
|  | 111.                |
| Vegeahn <i>v.</i> Guntner.....                   | 167 Mass., 92.      |
| State <i>v.</i> Coyle (Okla.).....               | 130 Pac. Rep., 316. |

*United States v. John S. Steers et al.* Indictment returned February 17, 1910, in Eastern District of Kentucky, charging conspiracy to restrain trade. This is the so-called "*Night Rider*" case where the restraint consisted in preventing the shipment of tobacco in interstate commerce by means of violence and intimidation.

After the overruling of demurrers and various pleas in abatement a trial was had, and on April 16, 1910, a verdict of guilty was returned as to eight of twelve defendants and fines aggregating \$3,500 were imposed. The case was appealed to Circuit Court of Appeals, and the verdict was affirmed December 5, 1911. May 11, 1912, the fines were commuted by the President to payment of costs of suit. (See cases under Kentucky, seq.)

#### CASES SHOWING POWER OF CONGRESS UNDER ANTI-TRUST ACT.

|  |                             |
|--|-----------------------------|
| Addystone Pipe Co. Case.....                           | 175 U. S., 245.             |
| American Tobacco Co. Case..                            | 221 U. S., 180-181.         |
| Bement v. National Harrow Co.....                      | 186 U. S., 92.              |
| Central Ohio Salt Co. v. Guthrie.....                  | 35 Ohio St., 666, 672.      |
| (Quoted and approved in Northern Securities case.)     |                             |
| Charles River Bridge v. Warren Bridge.....             | 11 Pet., 567.               |
| Gibbs v. Baltimore Gas Co.....                         | 130 U. S., 408-409.         |
| Gompers v. Bucks Stove & Range Co.....                 | 221 U. S., 438-439.         |
| Henry v. A. B. Dick Co.....                            | 223 U. S.; 224 U. S., 6-12. |
| In re Greene.....                                      | 52 Fed. R., 115.            |
| Montague v. Lowry.....                                 | 193 U. S., 45.              |
| Morris Run Coal Co. v. Barclay Coal Co.....            | 68 Pa. St., 173, 186.       |
| (Quoted and approved in Northern Securities case.)     |                             |
| National Cotton Oil Co. v. Texas.....                  | 197 U. S., 128-129.         |
| Northern Securities Case.....                          | 193 U. S., 351-352.         |
| Pearsall v. Great Northern Railway Co.....             | 161 U. S., 676.             |
| Standard Oil Case.....                                 | 221 U. S., 50.              |
| Swift & Co. v. United States.....                      | 196 U. S., 395.             |
| United States v. Joint Traffic Asso.....               | 171 U. S., 568.             |
| United States v. Joint Traffic Assn.....               | 171 U. S., 566-568.         |
| United States v. Swift & Co.....                       | 122 Fed Rep., 534.          |
| United States v. Trans-Missouri Freight Assn.....      | 166 U. S., 312, 313.        |
| United States v. Trans-Missouri Freight Assn.....      | 166 U. S., 316.             |
| United States v. Workingmen's Amalgamated Council..... | 54 Fed R., 996.             |
| Whitwell v. Continental Tobacco Co.....                | 125 Fed. R. 457-458.        |

#### GENERAL POWER OF CONGRESS; SOME OTHER CASES.

|   |                       |
|---|-----------------------|
| Blake v. McClung.....                                 | 172 U. S., 239.       |
| Brown et al. v. Maryland.....                         | 12 Wheat., 413, 1827. |
| Farmers' and Mechanics' National Bank v. Dearing..... | 91 U. S., 29.         |
| Gibbons v. Ogden.....                                 | 9 Wheat., 1, 1824.    |
| In re Rahrer, Petitioner.....                         | 140 U. S., 545.       |
| Leisy v. Hardin.....                                  | 135 U. S., 100.       |
| McCulloch v. The State of Maryland et al.....         | 4 Wheat., 316, 1819.  |
| Munn v. Illinois.....                                 | 94 U. S., 113.        |

|   |                 |
|---|-----------------|
| Nicol <i>v.</i> Ames; In re Nichols; Skillen <i>v.</i> Ames<br>and Ingwersen <i>v.</i> United States..... | 173 U. S., 509. |
| Pollock <i>v.</i> Farmers' Loan & Trust Co.; Hyde <i>v.</i><br>Continental Trust Co.....                  | 158 U. S., 601. |
| Regan <i>v.</i> Mercantile Trust Co.....  | 154 U. S., 413. |
| Robbins <i>v.</i> Shelby County Taxing District.....  | 120 U. S., 489. |
| Trade-Mark Cases.....   | 100 U. S., 82.  |
| Walling <i>v.</i> The State of Michigan.....  | 116 U. S., 446. |

## ALABAMA.

CONSTITUTION, 1901.

SEC. 103. The legislature shall provide by law for the regulation, prohibition, or reasonable restraint of common carriers, partnerships, associations, trusts, monopolies, and combinations of capital, so as to prevent them or any of them from making scarce articles of necessity, trade, or commerce, or from increasing unreasonably the cost thereof to the consumer, or preventing reasonable competition in any calling, trade, or business.

SEC. 233. No corporation shall engage in any business other than that expressly authorized in its charter or articles of incorporation.

SEC. 234. No corporation shall issue stock or bonds except for money, labor done, or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations shall not be increased except in pursuance of general laws, nor without the consent of the persons holding the larger amount in value of stock, first obtained at a meeting to be held after thirty days' notice, given in pursuance of law.

### STATUTES.

SEC. 7579. Any person or corporation who engages or agrees with other persons or corporations, or enters into, directly or indirectly, any combination, pool, trust, or confederation, to regulate or fix the price of any article or commodity to be sold or produced within this state, or any person or corporation who enters into, becomes a member of, or party to, any pool, agreement, combination or confederation, to fix or limit the quantity of any article or commodity to be produced, manufactured, mined, or sold, in this state, must, on conviction, be fined not less than five hundred nor more than two thousand dollars.

SEC. 7580. Any corporation chartered under the laws of this state, or any officer, stockholder, agent, or employe of any such corporation, which enters into any combination with any other corporation or person with the intent to place the management or control of any such corporation in the hands of another corporation or person, and thereby limit or fix the price, restrict or diminish the production, manufacture, sale, use, or consumption of any article of commerce, must, on conviction, be fined not less than five hundred nor more than two thousand dollars.

SEC. 7581. Any person or corporation, domestic or foreign, which shall restrain or attempt to restrain the freedom of trade or production, or which shall monopolize, or attempt to monopolize the production, control, or sale of any commodity, or the prosecution, management, or control of any kind, class or description of business; or which shall destroy, or attempt to destroy, competition in the manufacture or sale of a commodity, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not less than five hundred nor more than two thousand dollars for each offense.

SEC. 7582. The four preceding sections must be given in special charge to the grand jury.

SEC. 2487. Any person, firm, or corporation injured or damaged by an unlawful trust, combine, or monopoly, or its effect, direct or indirect, may, in each instance of such injury or damage, recover the sum of five hundred dollars and all actual damages from any person, firm, or corporation creating, operating, aiding or abetting such a trust, combine, or monopoly; and may maintain the action therefor against any one or more of the parties to the trust, combine, or monopoly, or their attorneys, officers, or agents, who aid or abet such trust, combine or monopoly. And all such actions may be prosecuted to final judgment or decree against any one or more of the defendants thereto, notwithstanding there may be a dismissal, acquittal, verdict, judgment, or decree in favor of one or more of the defendants.

SEC. 2488. Actions under the preceding section may be brought in any county where the trust, combine, or monopoly was formed, or where it exists or is carried on, promoted, operated, practiced, employed, used or enjoyed; or in any county in which either of the defendants

may have a domicile, or where an officer or agent of any defendant corporation may be found.

#### UNLAWFUL POOLING OF FREIGHTS.

Any officer, agent, or servant of a person or corporation operating a railroad, who aids in making or carrying out an agreement between railroads, commonly called a pool, for the division between themselves of the freight-carrying business of any place in this state, whereby trade is restrained by the establishment of extortionate rates and the prevention of free competition, unless such agreement has been approved by the railroad commissioners, must, on conviction, be fined not less than fifty, nor more than two hundred dollars. (Act of 1883, sec. 2.)

#### INSURANCE.

That every contract or policy of insurance made or issued after the passage of this act shall be construed to mean that in the event of loss or damage thereunder, the assured or beneficiary thereunder may, in addition to the actual loss or damage suffered, recover twenty-five per cent of the amount of such actual loss, any provision or stipulation in such contract or policy to the contrary notwithstanding; *Provided*, at the time of the making of such contract or policy of insurance, or subsequently before the time of trial the insurer belonged to, or was a member of, or in any way connected with, any tariff association or such like thing by whatever name called or who had any agreement or had any understanding with any other person, corporation or association engaged in the business of insurance as agent or otherwise about any particular rate of premium which should be charged or fixed for any kind or class of insurance risk; *And provided further*, no stipulation or agreement in such contract or policy of insurance to arbitrate loss or damage nor to give notice or make proofs of loss or damage shall in any such case be binding on the assured or beneficiary, but right of action accrues immediately upon loss or damage.

*Be it further enacted*, That if it is shown to the reasonable satisfaction of the jury by a preponderance of the weight of the testimony that such assurer at the time of the making of such agreement or policy of insurance or

subsequently before the time of trial belonged to, or was a member of, in any way connected with any tariff association or such like thing by whatever name called, either in or out of this state, or had made any agreement or had any understanding either in or out of this state with any person, corporation or association engaged in the business of insurance as agent or otherwise about any particular rate of premium which should be charged or fixed for any risk of insurance on any person or property or on any kind or class of insurance risk, they must if they find for the assured or beneficiary in addition to his actual damages assess and add twenty-five per cent of the amount of such actual loss, and judgment shall be rendered accordingly.

*Be it further enacted,* That this act shall be liberally construed to accomplish its object.

February 18th, 1897.

#### COURT DECISIONS.

Citizens' Light, Heat & Power Co. *v.* Montgomery Light & Water Power Co., 171 Fed., 553.



## ARIZONA.

### CONSTITUTION, 1910.

SEC. 4. No corporation shall engage in any business other than that expressly authorized in its charter or by the law under which it may have been or may hereafter be organized.

SEC. 5. No corporation organized outside of the limits of this State shall be allowed to transact business within this State on more favorable conditions than are prescribed by law for similar corporations organized under the laws of this State; and no foreign corporation shall be permitted to transact business within this State unless said foreign corporation is by the laws of the country, State, or Territory under which it is formed permitted to transact a like business in such country, State, or Territory.

### STATUTES.

AN ACT Defining and prohibiting trusts, providing procedure to enforce the provisions of this act, and providing penalties for violation of the provisions of this act.

(Law 1912, c. 73.)

SEC. 1. A trust is a combination of capital, skill, or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any or all of the following purposes:

First.—To create or carry out restrictions in trade or commerce or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State.

Second.—To increase or reduce the price of merchandise (merchandise), products or commodities, or limit the production thereof, or to control the cost or rates of insurance.

Third.—To prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, products or commodities, or to prevent competition in aids to commerce.

Fourth.—To fix any standard or figure, whereby its price to the public shall be, in any manner, controlled or established, any article or commodity of merchandise, product or commerce intended for sale, use or consumption in this State.

Fifth.—To make or enter into, or execute or carry out, any contract, obligation or agreement of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure, by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the manufacture, sale, or transportation of any such article or commodity, that its price may in any manner be affected.

Sixth.—To regulate the transportation of any product or commodity.

And any such combinations are hereby declared to be against public policy, unlawful and void.

SEC. 2. All persons, companies, or corporations within this State are hereby denied the rights to form or to be in any manner interested, either directly or indirectly, as principal, agent, representative, consignee or otherwise in any trust as defined in Sec. 1 of this Act.

SEC. 3. Any corporation, holding a charter under the laws of the State of Arizona which shall violate any of the provisions of this Act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine; and any stockholder, director, officer, agent, representative or consignee of any such corporation shall be subject to the penalties herein prescribed.

SEC. 4. For a violation of any provision of this Act by any corporation, or any of its officers or agents, mentioned herein, it shall be the duty of the Attorney General of the State or County Attorney of any county in which said violation may occur, or either of them, upon his own

motion, to institute an action in any court in this State having jurisdiction thereof, for the forfeiture of the charter, rights and franchise of such corporation, and the dissolution of its corporate existence.

SEC. 5. Every person, company, or corporation within or without this State, their officers, agents, representatives, or consignees, violating any of the provisions of this Act, within this State, are hereby denied the right, and are hereby prohibited from doing any business within this State, and all persons, companies and corporations, their officers, agents, representatives and consignees within this State are hereby denied the right to handle the goods of, or in any manner deal with, directly or indirectly, any such person, company, or corporation, their officers, agents, representatives, or consignees, and it shall be the duty of the Attorney General, and the County Attorney of any county in the State where any violation of this Act be committed, or either of them, to enforce the provisions of this section by injunction or other proceeding; and all persons, companies and corporations, their officers, agents, representatives or consignees, violating any of the provisions of this section, either directly or indirectly or abetting or aiding either directly or indirectly in any violation of any provisions of this section, shall be deemed guilty of a misdemeanor and shall be fined not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), and confined in jail not less than Thirty (30) Days, nor more than six (6) Months, and shall forfeit not less than One Hundred Dollars (\$100.00) for each and every day such violation may continue, which may be recovered in the name of the State of Arizona in any court of competent jurisdiction.

SEC. 6. Each and every person, company or corporation, their officers, agents, representatives or consignees, who either directly or indirectly, violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and on conviction thereof shall be subject to a fine of not less than One Hundred Dollars (\$100.00) nor more than One Thousand (\$1,000.00), and shall be imprisoned not less than Thirty (30) Days nor more than Six (6) Months, and in addition thereto for each and every day thereafter that such violation shall be committed or continued, forfeit and pay the sum of One

Hundred Dollars (\$100.00), which may be recovered in the name of the State of Arizona, in any county where the offense is committed or where either of the offenders reside, and it shall be the duty of the Attorney General of the State or of the County Attorney of any county in the State, in which said violation shall occur, or either of them, to prosecute and enforce the provisions of this Act.

SEC. 7. The creation or maintenance of a monopoly within the State shall be unlawful, and any person, partnership, association, company, or corporation attempting to create or maintain such monopoly shall be punished, as provided for persons, companies, or corporations, their officers, agents, representatives, or assigns forming or interested in trusts, as defined herein, as provided in Sec. 6 hereof, and to all other penalties provided herein for violation of the provisions of this Act.

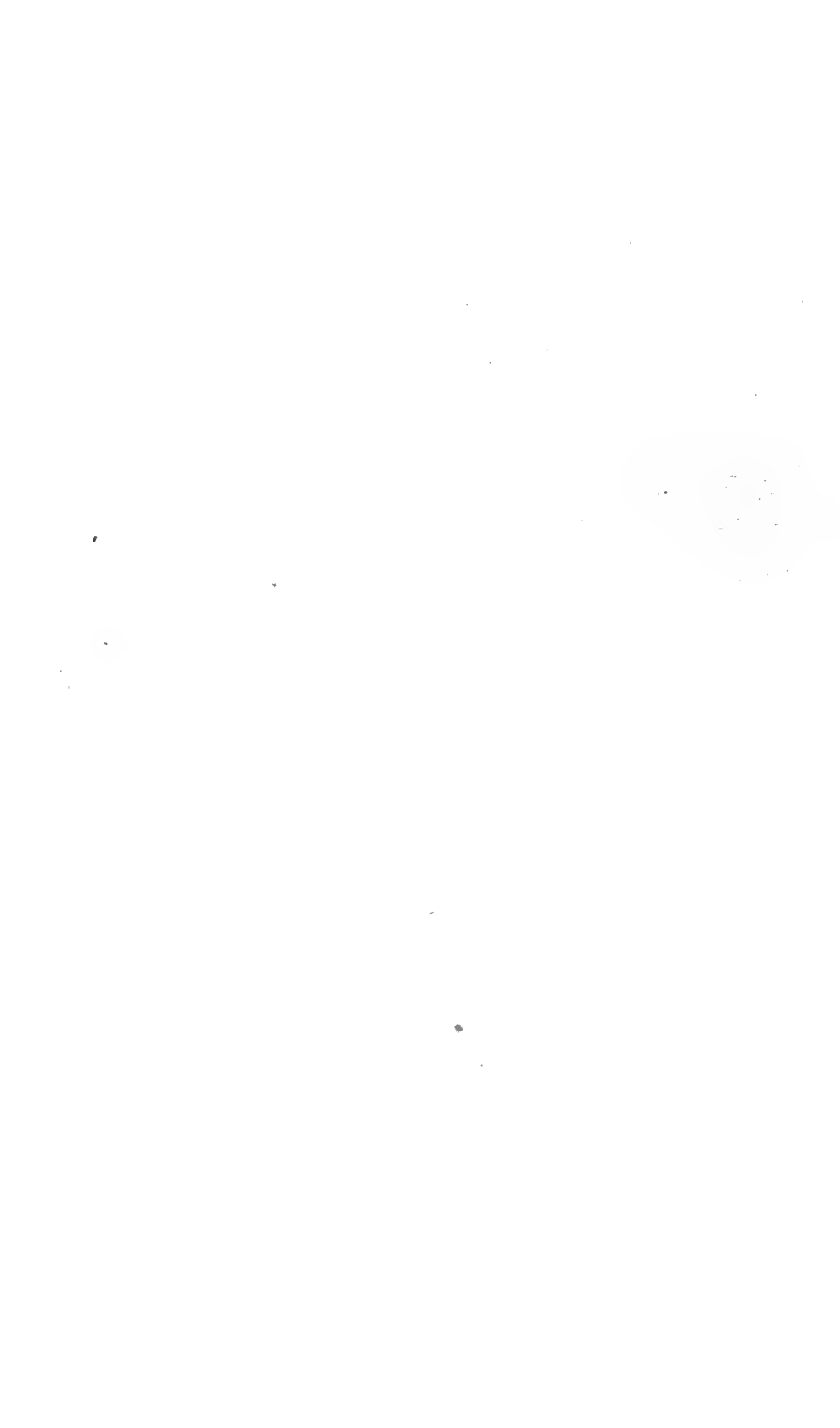
SEC. 8. Any contract or agreement in violation of any of the provisions of this Act shall be absolutely void and not enforceable in any of the courts of this State, and when any civil action relating to and growing out of transactions prohibited by this Act, shall be commenced in any court of this State, it shall be lawful to plead in the defense thereof that the plaintiff or any other person interested in the prosecution of the case is, at the time, or has within One (1) Year next preceding the date of the commencement of any such action, been guilty either as principal, agent, representative, or consignee, directly or indirectly, of a violation of any of the provisions of this Act, or that the cause of action grows out of any business transaction in violation of this Act.

SEC. 9. That any person, firm, company, or corporation that may be damaged by any such agreement, trusts or combination described in Secs. 1 and 2 of this Act, may sue for and recover in any court of competent jurisdiction in this State, of any person, company, or corporation, operating such trust or combination, such damages as they have sustained, together with a reasonable attorney fee.

SEC. 10. It shall be the duty of the Attorney General of the State, and the County Attorneys in their respective counties, to diligently prosecute any and all persons violating any of the provisions of this Act, and it shall be the duty of all State and county officials having no-

tice and knowledge of any violation of the provisions of this Act to notify the county attorney of their respective counties and the Attorney General of the State, of the fact of such violation, and to furnish them with the names of any witnesses by whom such violation can be proved; if any such officer or officers shall fail to comply with the provisions of this section he shall, upon conviction, be fined in any sum not less than One Hundred Dollars (\$100.00) nor more than One Thousand Dollars (\$1,000.00), and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office.

SEC. 11. The several superior courts of this State, and the judges thereof, shall have jurisdiction, and it shall be their duty, upon good cause shown and upon written application of the County Attorney or the Attorney General, to cause to be issued by the clerk of said court subpoenas for such witnesses as may be named in the application of a county attorney or the Attorney General, and to cause the same to be served by the sheriff of the county where such subpoena is issued; and such witnesses shall be compelled to appear before such court or judge, at the time and place set forth in the subpoena, and shall be compelled to testify as to any knowledge they may have of the violation of any of the provisions of this Act; and any witness who fails or refuses to attend and testify shall be punished as for contempt as provided by law. Any person subpoenaed and examined shall not be liable to criminal prosecution for any violation of this Act about which he may testify. Neither shall the evidence of any such witness be used against him in any criminal proceeding. The evidence of all witnesses so subpoenaed shall then be taken down by the reporter of said court and shall be transcribed and placed in the hands of the County Attorney or the Attorney General, and he shall, in the proper courts, at once prosecute such violator or violators of this Act as the testimony so taken shall disclose. Witnesses subpoenaed as provided for in this section shall be compelled to attend from any county in the State.



## ARKANSAS.

CONSTITUTION, 1874.

ART. 11, SEC. 19. Perpetuities and monopolies are contrary to the genius of a republic, and shall not be allowed; \* \* \*

STATUTES (ACT 1905 AS AMENDED MAR. 12, 1913).

Any corporation organized under the laws of this or any other state, or country, and transacting or conducting any kind of business in this state, or any partnership or individual, or other association or persons whatsoever, who are now, or shall hereafter create, enter into, become a member of, or a party to, any pool, trust, agreement, combination, confederation or understanding, whether the same is made in this state or elsewhere, with any other corporation, partnership, individual, or any other person or association of persons, to regulate or fix either in this state or elsewhere the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or tornado, or to maintain said price when so regulated or fixed, or who are now, or shall hereafter enter into, become a member of, or a party to, any pool, agreement, contract, combination, association or confederation, whether made in this state or elsewhere, to fix or limit in this state or elsewhere, the amount of quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado or any other kind of policy issued by any corporation, partnership, individual or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud and be subject to the penalties as provided by this act.

SEC. 2. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer, representative or agent thereof, violating any of the provisions of this Act, shall forfeit not less than two hundred dollars, nor more than five thousand dollars for every such offense, and each day such person, corporation, partnership or association shall continue to do so shall be a separate offense, the penalty in such case to be recovered by an action in the name of the State at the relation of the Attorney General, the moneys thus collected to go into the State Treasury for the benefit of the common school fund of this State, except as hereinafter provided. (Act Mar. 12, 1913.)

SEC. 3. Any corporation created or organized by or under the laws of this state which shall violate any of the provisions of the preceding sections of this act shall thereby forfeit its corporate rights and franchises and its corporate existence shall, upon proper proof being made thereof in any court of competent jurisdiction in this state, be by the court declared forfeited, void and of non-effect, and shall thereupon cease and determine; and any corporation created or organized by or under the laws of any other state or country, which shall violate any provisions of the preceding sections of this act, shall thereby forfeit its right and privilege thereafter to do any business in this state, and upon proper proof being made thereof in any court of competent jurisdiction in this state, its right and privilege to do business in this state shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as the agent of such foreign corporation in transacting business in this state, has been, while acting as such agent, and in the name, behalf or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of state, and if it be an insurance company, also to the auditor of the state, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation.

SEC. 4. No individual, company or corporation shall be subject to any of the penalties of this Act, unless such individual, company or corporation shall do within this



State some act directly tending to carry into effect a conspiracy prohibited by this Act; and the purchase, sale, delivery or disposition of any article of commerce in a lawful manner within this State shall not be deemed an act done in pursuance of, or for the purpose of carrying into effect any such conspiracy. (Act Mar. 12, 1913.)

SEC. 5. A monopoly is any union or combination or consolidation or affiliation of capital, credit, property, assets, trade, customs, skill or acts of any other valuable thing or possession, by or between persons, firms or corporations, or association of persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried out, or whereby the several results described herein are reasonably calculated to be produced; and a monopoly as thus defined and contemplated, includes not merely such combination by and between two or more persons, firms and corporations, acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom, trade or other valuable thing on, possession whether effected by the ordinary methods of partnership or by actual union under the legal form of a corporation, or any incorporated body resulting from the union of one or more distinct firms or corporations, or by the purchase, acquisition or control of shares or certificates of stocks or bonds, or other corporate property or franchises, and all partnerships and corporations that have been or may be, created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credit, property, customs, trade, corporate or firm belongings of two or more firms or corporations or companies, are especially declared to constitute monopolies within the meaning of this act, if so created or entered into for any one or more of the purposes named in this act; and a monopoly, as thus defined in this section, is hereby declared to be unlawful and against public policy, and any and all persons, firms, corporations or association of persons engaged therein shall be deemed and adjudged to be guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

SEC. 6. If any person, persons, company, partnership, association, corporation or agent engaged in the manufacture or sale of any article of commerce or consumption produced, manufactured or mined in this state, or elsewhere, shall, with the intent and purpose of driving out competition, or for the purpose of financially injuring competitors, sell within this state at less than cost of manufacture or production, or sell in such a way, or give away in this state, their productions for the purpose of driving out competition, or financially injuring competitors engaged in similar business, said person, or persons, company, partnership, association, corporation, or agent resorting to this method of securing a monopoly within this state in such business, shall be deemed guilty of a conspiracy to form and secure a trust or monopoly in restraint of trade, and on conviction thereof shall be subjected to the penalties of this act.

SEC. 7. It shall be the duty of the Secretary of State on or about the first day of July each year, to address to the president, secretary or treasurer, or any director of said company doing business in this State, a letter of inquiry as to whether the said corporation has all or any part of its interest or business in or with any trust, combine or association or persons or stockholders as named in the preceding provisions of this Act, and to require an answer under oath, of the president, secretary or treasurer, or any director of said company. A form of affidavit shall be inclosed in said letter of inquiry, as follows:

## AFFIDAVIT.

State of Arkansas, County of -----

I, ----- do solemnly swear that I am the ----- (president, secretary, treasurer or director) of the corporation known and styled ----- duly incorporated under the laws of ----- on the ----- day of ----- and now transacting or conducting business in the State of Arkansas, and that I am duly authorized to represent said corporation in making this affidavit; and I do further solemnly swear that said -----, known and styled as aforesaid, has not, since the ----- day of ----- (naming the day upon which this Act is to take effect), created, entered into or

become a member of or a party to, and was not on the ----- day of ----- nor at any day since that date, and is not now a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association or persons, either in this State or elsewhere, to regulate or fix in this State the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid; and that it has not entered into or become a member of or a party to any pool, trust, agreement, contract, combination, or confederation, to fix or limit in this State the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by the parties aforesaid; and that it has not issued and does not own any trust certificates for any corporation, agent, officer or employee, or for the directors or stockholders of any corporation, and has not entered into and is not now in any combination, contract or agreement with any person, or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured products thereof in the hands of any trustee or trustees, with the intent to fix or limit the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any article in Arkansas.

-----  
 President, Secretary, Treasurer, or Director.

“Subscribed and sworn to before me, a -----  
 within and for the County of ----- this -----  
 day of ----- 1-----  
 Seal.

"And on refusal to make oath in answer to said inquiry, or on failure to do so, within thirty days from the mailing thereof, the Secretary of State shall certify said fact to the Attorney General, and it shall be the duty of the Attorney General, at his earliest practical moment, in the name of the State and at the relation of the Attorney General, to proceed against said corporation, if a domestic corporation, for the recovery of the money forfeit provided for in this Act, and also for the forfeiture of its charter or certificate of incorporation. If a foreign corporation, to proceed against such corporation for the recovery of the money forfeit provided for in this Act, and to forfeit its right to do business in this State. Provided, that within sixty days after the passage of this Act, all foreign corporations desiring to do business in this State shall file a new bond, as the statutes direct; and such sureties and bondsmen shall be liable for the penalties and forfeitures, including costs, provided for in this Act. (Act Mar. 12, 1913.)

SEC. 8. Whenever any proceedings shall be commenced in any court of competent jurisdiction in this State by the Attorney General against any corporation or corporations, individual or individuals, or association of individuals, or joint stock association or co-partnership under the law against the formation and maintenance of pools, trusts of any kind, monopolies or confederations, combinations or organizations in restraint of trade, to dissolve the same or to restrain their formation or maintenance in this State, or to recover the penalties in this Act provided, then, and in such case, if the Attorney General desire to take the testimony of any officer, director, agent or employee of any incorporation, or joint stock association proceeded against, or in case of a co-partnership any of the members of said partnership, or any employee thereof, in any court in which said action may be pending; and the individual or individuals whose testimony is desired are without the jurisdiction of this, or reside without the State of Arkansas, then in such case the Attorney General may file in said court in term time, or with the judge thereof in vacation, a statement, in writing setting forth the name or names of the persons or individuals whose testimony he desires to take, and the time when and the place where he desires

mony of such person or persons, and for the production of any books, papers, documents in his possession or under his control relating to the merits of any suit, or to any evidence therein, shall appoint a commission for that purpose, who shall be an officer authorized by law to take depositions in this State, and said Commission shall issue immediately a notice in writing, directed to the attorney or attorneys of record in said cause, or agent, or officer, or other employee, that the testimony of the person named in the application of the Attorney General is desired, and requesting said attorney or attorneys of record, of said officer, agent or employee to whom said notice is delivered, and upon whom the same is served, to have said officer, agent, employee, representative of said co-partnership, or agent thereof, whose evidence is desired to take, together with such books, papers and documents, at the place named in the application, shall then and there testify. Provided, however, that such application shall always allow in fixing said time and same number of days' travel to reach the designated place in Arkansas that would be allowed by law in case of taking depositions; provided, also in addition to the above named time, six days shall be allowed for the attorneys of record, or the agent, officer or employee on whom notice is served to notify the person or persons whose testimony is to be taken. Service of said notice as returned in writing may be made by any one authorized by law to serve subpoena. (Act Mar. 12, 1913.)

SEC. 9. Whenever the persons mentioned in the preceding sections shall be notified as above provided, to request any officer, agent, director or employee to attend before any court, or before any person authorized to take the testimony in said proceedings, and the person or persons whose testimony is required as above provided, shall fail to appear and testify and produce any books, papers and documents, they may be ordered to procure by court, or the other office authorized to take such evidence, then it will be the duty of the court, upon motion of the Attorney General, to strike out the answer, motion, reply, demurrer or other pleading then or thereafter filed in said action or proceeding by the said corporation, joint stock association or co-partnership whose officer, agent, director or employee has neglected or failed to attend and testify and produce all books, papers and documents he or they shall have been ordered to produce

in said action by the court or person authorized to take said testimony and said court shall proceed to render judgment by default against said co-partnership, joint stock association or corporation, joint stock association or co-partnership. And it is further provided, that in case of any officer, agent, employee, director or representative of any corporation, joint stock association or co-partnership in such proceeding, as hereinbefore mentioned, who shall reside or be found within this State, shall be subpoenaed to appear and testify, or produce books, papers and documents and shall fail, neglect or refuse to do so, then the answer, motion, demurrer or other pleading then and thereafter filed by said corporation, joint stock association or co-partnership in any such proceeding, shall on motion of the Attorney General, be stricken out and judgment in said cause rendered against said corporation, joint stock association or co-partnership. (Act Mar. 12, 1913.)

SEC. 10. It will be the duty of the Attorney General to enforce the provisions of this Act. As compensation for his services in this behalf, the Attorney General shall be entitled to his actual expenses incurred in the prosecution of such suits, to be paid by the defendant or defendants when judgment is rendered for the State, to be taxed as costs by the court hearing the cause. (Act Mar. 12, 1913.)

SEC. 11. In all suits instituted under this Act to forfeit the charter of corporations, or to forfeit the right of a corporation to do business in this State, where judgment of forfeiture is obtained, and the cause not appealed to the Supreme Court, the Circuit Court rendering such judgment shall allow the Attorney General, his actual expenses, to be paid out of the assets of said corporation. All actions authorized and brought under this Act shall have precedence on motion of the Attorney General, of all other business, civil and criminal, except criminal cases where the defendants are in jail. (Act Mar. 12, 1913.)

#### COURT DECISIONS.

Hammond Packing Co. v. State, 212 U. S., 322.

State v. Lancashire Ins. Co., 66 Ark., 466; 45 L. R. A., 348.

State v. Aetna Fire Ins. Co. 66 Ark 480

## CALIFORNIA.

CONSTITUTION, 1879.

ART. 12, SEC. 9. No corporation shall engage in any business other than that expressly authorized in its charter, or the law under which it may have been or may hereafter be organized; nor shall it hold for a longer period than five years any real estate except such as may be necessary for carrying on its business.

### STATUTES.

[March 23, 1907.]

#### CARTWRIGHT ANTI-TRUST LAW:

SECTION 1. A trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce.

2. To limit or reduce the production, or increase the price of merchandise or of any commodity:

3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state.

5. To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind, or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard fig-

are or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein, is declared to be unlawful, against public policy and void, provided that no agreement, combination or association shall be deemed to be unlawful or within the provisions of this act, the object and business of which are to conduct its operations at a reasonable profit or to market at a reasonable profit those products which cannot otherwise be so marketed, provided further, that it shall not be deemed to be unlawful, or within the provisions of this act, for persons, firms, or corporations engaged in the business of selling or manufacturing commodities of a similar or like character, to employ, form, organize or own any interest in any association, firm or corporation, having as its object or purpose the transportation, marketing or delivery of such commodities. (As amended by L. 1909, c. 362.)

SEC. 2. For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the attorney-general or the district attorney of the proper county, to institute proper suits or quo warranto proceedings in any court of competent jurisdiction for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

SEC. 2½. It shall be lawful to enter into agreements or form associations or combinations, the purpose and effect of which shall be to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade. (Added, L. 1909, c. 362.)



SEC. 3. Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises or functions of a corporation in this state, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this state, and it shall be the duty of the attorney-general to enforce this provision by bringing proper proceedings by injunction or otherwise. The secretary of state shall be authorized to revoke the license of any such corporation or association heretofore authorized by him to do business in this state.

SEC. 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant or employee, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty (\$50) dollars nor more than five thousand (\$5,000) dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

SEC. 5. In any indictment, information or complaint for any offense named in this act, it is sufficient to state the purpose or effects of the trust or combination, and that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

SEC. 6. In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonged to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such. In case any court of record, or in vacation any judge of said court in which is pend-

ing any civil, criminal or other action or proceeding brought or prosecuted by the attorney-general or any district attorney for the violation of any of the provisions of this act or in any action or proceeding for the violation of the law of this state, against conspiracy or combination in restraint of trade so orders, no person so ordered shall be excused from attending, testifying or producing books, papers, schedules, contracts, agreements or any other document in obedience to the subpoena or under the order of such court or any commissioner or referee appointed by said court to take testimony or any notary public or other person or officer authorized by the laws of this state to take depositions when the order made by such court or judge thereof includes a witness whose deposition is being taken before such notary public or other officer on the ground or for the reason that the testimony or evidence required of him may tend to criminate him or subject him to any penalty; but no individual shall be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, before any such court, person or officer.

SEC. 7. Each and every firm, person, partnership, corporation or association of persons, who shall in any manner violate any of the provisions of this act, shall, for each and every day that such violations shall be committed or continued, after due notice given by the attorney-general or any district attorney, forfeit and pay the sum of fifty (\$50) dollars, which may be recovered in the name of the people of the state of California, in any county where the offense is committed, or where either of the offenders resides; and it shall be the duty of the attorney-general, or the district attorney of any county on the order of the attorney-general, to prosecute for the recovery of the same. When the action is prosecuted by the attorney-general against a corporation or association of persons, he may begin the action in the supreme (superior) court of the county in which defendant resides or does business.

SEC. 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and shall not be enforceable either in law or equity.

SEC. 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

SEC. 10. It shall not be lawful for any person, partnership, association or corporation, or any agent thereof, to issue or to own trust certificates, or for any person, partnership, association or corporation, agent, officer or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article, and any person, partnership, association or corporation that shall enter into any such combination, contract or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars, nor more than five thousand dollars.

SEC. 11. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover twofold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act may be pending that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned whether they reside in the county where such action is pending or not.

SEC. 12. The word "person" or "persons" whenever used in this act shall be deemed to include corporations,

partnerships and associations existing under or authorized by the laws of this state or any other state, or any foreign country.

SEC. 13. Labor whether skilled or unskilled is not a commodity within the meaning of this act. (Added by L. 1909, c. 362.) (Gen. Laws, Sec. 4166.)

#### COURT DECISIONS.

San Diego Water Co. *v.* San Diego Flume Co., 108 Cal., 549.

Merchant's Ad—Sign Co. *v.* Sterling, 124 Cal., 429; 46 L. R. A., 142.

|  |                     |
|--|---------------------|
| Calif. Steam Navigation & Trust Co. <i>v.</i> Wright | 6 Cal., 258.        |
| Lightner <i>v.</i> Menzel                            | 35 Cal., 452.       |
| Wright <i>v.</i> Ryder                               | 36 Cal., 342.       |
| More <i>v.</i> Bonner                                | 40 Cal., 251.       |
| Callaghan <i>v.</i> Donnolly                         | 45 Cal., 152.       |
| Schwalm <i>v.</i> Holmes                             | 49 Cal., 665.       |
| Weil <i>v.</i> Jones                                 | 53 Cal., 46.        |
| Santa Clara Co. <i>v.</i> Hayes                      | 76 Cal., 387.       |
| Havermeyer <i>v.</i> Superior Court                  | 84 Cal., 378.       |
| Brown <i>v.</i> Kling                                | 101 Cal., 295.      |
| Pacific Factor Co. <i>v.</i> Adler                   | 90 Cal., 110.       |
| City Carpet Beating Co. <i>v.</i> Jones              | 102 Cal., 506.      |
| Visalia Gas & Elec. Co. <i>v.</i> Sims               | 104 Cal., 326.      |
| Ragsdale <i>v.</i> Nagle                             | 106 Cal., 332.      |
| Gregory <i>v.</i> Spieker                            | 110 Cal., 150.      |
| Herrman <i>v.</i> Menzies                            | 115 Cal., 16.       |
| Meyers <i>v.</i> Merillion                           | 118 Cal., 352.      |
| Calif., etc., Association <i>v.</i> Stelling         | 141 Cal., 720.      |
| Dodge <i>v.</i> Dodge                                | 145 Cal., 380.      |
| Pavkovich <i>v.</i> S. P. R. R.                      | 87 Pac. Rep., 1097. |
| Franz <i>v.</i> Bieler                               | 126 Cal., 176.      |
| Works <i>v.</i> Jones                                | 102 Cal., 506.      |
| Grogan <i>v.</i> Chaffee                             | 156 Cal., 611.      |
| Ghirardelli <i>v.</i> Hunsicker (Cartwright Act)     | 164 Cal., 355.      |

## COLORADO.

CONSTITUTION, 1876.

ART. XV, SEC. 5. No railroad corporation, or the lessees or managers thereof, shall consolidate its stock, property or franchises with any other railroad corporation owning or having under its control a parallel or competing line.

### STATUTES.

[Chapter 161 (Acts 1913).]

#### TRUSTS—DEFINED AND PROHIBITED.

AN ACT Defining and prohibiting trusts; providing procedure to enforce the provisions of this act, and penalties for violations of the provisions of this act.

SECTION 1. A trust is a combination of capital, skill or <sup>Definition of</sup> ~~Trusts.~~ acts, by two or more persons, firms, corporations, or associations of persons, or by any two or more of them, for either, any or all of the following purposes:

First. To create or carry out restrictions in trade or commerce, or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this State.

Second. To increase or reduce the price of merchandise, produce or commodities.

Third. To prevent competition in the manufacturing, making, transportation, sale or purchase of merchandise, produce, ores, or commodities, or to prevent competition in aids of commerce.

Fourth. To fix any standard of figures, whereby the price to the public of any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this State shall, in any manner, be controlled or established.

Fifth. To make or enter into, or execute or carry out, any contract, obligation or agreement of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure; or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure; or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others so as to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity; or by which they shall agree so to pool, combine or unite any interest they may have in connection with the manufacture, sale or transportation of any such article or commodity, that its price may in any manner be affected.

Against public policy.

And all such combinations are hereby declared to be against public policy, unlawful and void; provided that no agreement or association shall be deemed to be unlawful or within the provisions of this act, the object and purposes of which are to conduct operations at a reasonable profit or to market at a reasonable profit those products which cannot otherwise be so marketed; provided further that it shall not be deemed to be unlawful, or within the provisions of this act, for persons, firms, or corporations engaged in the business of selling or manufacturing commodities of a similar or like character to employ, form, organize or own any interest in any association, firm or corporation having as its object or purpose the transportation, marketing or delivering of such commodities; and provided further that labor, whether skilled or unskilled, is not a commodity within the meaning of this act.

Lawful agreements.

SECTION 2. It shall be lawful to enter into agreements or form associations or combinations, the purpose and effect of which shall be to promote, encourage or increase competition in any trade or industry, or which are in furtherance of trade.

Attorney General or District Attorney to begin action.

SECTION 3. For a violation of any of the provisions of this act by any corporation, or by any of its officers or agents mentioned herein, it shall be the duty of the attorney general of this State, or district attorney of any district in which said violation may occur, or either of them.

in this State having jurisdiction thereof for the forfeiture of the charter, rights and franchise of such corporation, and the dissolution of its existence.

SECTION 4. Every foreign corporation, as well as every foreign association, exercising any of the powers, franchises or functions of a corporation in this State, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this State, and it shall be the duty of the Attorney General to enforce this provision by bringing proper proceedings by injunction or otherwise.

Foreign corporations violating this act.

SECTION 5. Each and every person, company or corporation, the officers, agents or representatives thereof, violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not more than one thousand dollars, or to imprisonment for not more than six months; and it shall be the duty of the Attorney General of the State, or the district attorney of any district in the State, in which said violation shall occur, or either of them, to prosecute and enforce the provisions of this act.

Violations. Penalty.

SECTION 6. Any contract or agreement in violation of any of the provisions of this act shall be absolutely void and not enforceable in any of the courts of this State; and when any civil action shall be commenced in any court of this State it shall be lawful to plead in defence thereof that the cause of action sued upon grew out of a contract or agreement in violation of the provisions of this act.

Contracts in violation, void.

SECTION 7. That any person, firm, company or corporation that may be damaged by any such agreement, trust or combination described in Section 1 of this act, may sue for and recover in any court of competent jurisdiction in this State, of any person, company or corporation operating such trust or combination, such damages as may have been thereby sustained.

Action for damages.

SECTION 8. In any proceeding pending in any court of record brought or prosecuted by the Attorney General, or any district attorney, for the violation of any of the provisions of this act, no person shall be excused from attending, testifying or producing books, papers, schedules, contracts, agreements or any other document, in obedience to the subpoena or under the order of such court, or any commissioner or referee appointed by said

No excuse from testifying because of incrimination.

No prosecution because of evidence given.

court to take testimony, or any notary public, or other person or officer authorized by the laws of this State to take depositions, when the orders made by such court, or judge thereof, included a witness whose deposition is being taken before such notary public or other officer, on the ground or for the reason that the testimony or evidence required of him may tend to criminate him or subject him to any penalty; but no individual shall be prosecuted or subjected to any penalty for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, before any such court, person or officer.

Approved April 7th 1913, at 9:03 A. M. o'clock.



## CONNECTICUT.

CONSTITUTION, 1818.

ART. I, SEC. 1. We declare, That all men when they form a social compact, are equal in rights; and that no man or set of men are entitled to exclusive public emoluments or privileges from the community.

### STATUTES.

[Chapter 185 Acts 1911.]

#### AN ACT Concerning Combinations to increase Prices of Necessities.

Any person who, for himself or as a member of any firm or an officer or agent of any corporation, conspires with or enters into any combination or agreement with any other person or any firm or corporation for the purpose of fixing or maintaining a higher price, at wholesale or retail, for ice, coal, or any other necessity of life than would prevail except for such conspiracy, combination, or agreement, or of limiting or restraining the production, manufacture, shipment, or sale of any such commodity for the purpose of increasing the price thereof, shall be fined not more than one thousand dollars, or imprisoned not more than five years, or both.

Combinations to fix price of necessities prohibited.

Approved, August 15, 1911.

### COURT DECISIONS.

The Norwich Gas Light Co. *v.* The Norwich City Gas Co., 25 Conn., 18.

The State *v.* Brennan's Liquors, 25 Conn., 277.

Connors *v.* Connolly, Conn. Rep. 86, 641.



## **DELAWARE.**

There are no anti-trust statutes in Delaware.



## **DISTRICT OF COLUMBIA.**

The general statutes of the United States (26 Stats. at Large, 209; Sup. 2d Ed., p. 762), and other laws prohibiting unlawful restraints of trade, monopolies and combines, are in force in this District.



## FLORIDA.

### STATUTES, 1906.

SEC. 3160. Every arrangement, contract, agreement, trust, or combination between persons or corporations, or between any person and any corporation, made with a view to, or tending to prevent, hinder or obstruct the lawful sale in this State, or any place therein, of beef or other fresh meat of cattle or any other edible animal raised, fattened or fed in the State of Florida, or any other beef or fresh meat, or with a view to or tending to prevent, hinder or obstruct the lawful sale of any cattle or other edible animal in this State, or any place therein, or which shall tend to monopolize or control the sale or price of beef or other fresh meat in this State, or any place therein, is hereby declared to be against public policy.

SEC. 3161. Any corporation chartered under the laws of this State, which shall violate any of the provisions of the preceding section shall thereby forfeit its charter and franchises, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate any of the provisions of said section, is hereby denied the right to do and is prohibited from doing business in this State. It is hereby made the duty of the Attorney-General of this State to enforce this provision by due process of law.

### COURT DECISIONS.

*Barbee v. Jacksonville & A. Plank Road Co.*, 6 Fla., 262.

*Stewart & Bro. v. Stearns & Culver Lbr. Co.*, 56 Fla., 570.





## GEORGIA.

### CONSTITUTION.

ART. IV, SEC. 2. The General Assembly of this state shall have no power to authorize any corporation to buy shares or stock in any other corporation in this state or elsewhere, or to make any contract or agreement whatever, with any such corporation, which may have the effect, or be intended to have the effect, to defeat or lessen competition in their respective businesses, or to encourage monopoly; and all such contracts and agreements shall be illegal and void.

### STATUTES, 1896.

SEC. 1. That, from and after the passage of this Act, all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this State, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

SEC. 2. *Be it further enacted by the authority aforesaid,* That any corporation, chartered under the laws of this State, which shall violate any of the provisions of this Act shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation, which shall violate any of the provisions of this Act, is hereby denied the right to do, and is prohibited from doing, business in this State. It is hereby made the duty of the Attorney-General of the State to enforce this provision by due process of law.

SEC. 3. *Be it further enacted by the authority aforesaid,* That any violation of the provisions of this Act shall be deemed, and is hereby declared to be destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars and by imprisonment in the penitentiary not less than one year nor more than ten years; or, in the judgment of the court, by either such fine or such imprisonment.

SEC. 4. *Be it further enacted by the authority aforesaid,* That the provisions of this Act shall not apply to agricultural products or live stock while in the possession of the producer or raiser.

SEC. 5. *Be it further enacted by the authority aforesaid,* That any person or persons, or corporations that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in Section one of this Act, may sue for and recover, in any court of competent jurisdiction in this State, of any person, persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise or articles the sale of which is controlled by such combination or trust.

SEC. 6. *Be it further enacted by the authority aforesaid,* That it shall be the duty of the Judges of the Superior Courts of this State specially to instruct the grand juries as to the provisions of this Act.

SEC. 7. *Be it further enacted by the authority aforesaid,* That all laws, and parts of laws in conflict with the provisions of this Act be, and the same are, hereby repealed.

Approved December 23, 1896.

#### GEORGIA CODE.

[Section 9.]

#### POOLING.

Acts 1890-1, SEC. 2466. It shall be unlawful for any insurance com-  
p. 206.  
Secs. 6466, pany, or companies, authorized to do business in this  
2443.

State, or the agent or agents thereof, to make, maintain, or enter into any contract, agreement, pool, or other arrangement with any other insurance company, or companies, licensed to do business in this State, or the agent or agents thereof, for the purpose of, or that may have the tendency or effect of, preventing or lessening competition in the business of insurance transacted in this State. And when it shall be made to appear to the commissioner of insurance that any company, or companies, agent, or agents have entered into any such contract, agreement, pool, or other arrangement, said commissioner shall revoke the license issued to such company or companies, and the same shall not be reissued until the president or chief officer of such company or companies shall file an affidavit with said commissioner, stating that such contracts, agreements, pools, or other arrangements have been annulled and made void: Provided, that nothing in this Article shall be so construed as to prevent any insurance company, legally authorized to transact business in this State, from separately surveying, inspecting, or examining the premises to be insured, by and with the consent of the owner, for the purpose of bringing about improvements in fire protection, so as to lessen the cost of insurance by reducing rates.

SEC. 2597. Any railroad company incorporated under <sup>Acts 1892, p. 51.</sup> the provisions of this Article shall have authority to sell, lease, assign, or transfer its stock, property, and franchises to, or to consolidate the same with, those of any other railroad company incorporated under the laws of this or any other State or of the United States, whose railroad within or without this State shall connect with or form a continuous line with the railroad of the company incorporated under this law, upon such terms as may be agreed upon; and conversely any such corporation organized under the provisions of this Article may purchase, lease, consolidate with, absorb, and merge into itself the stock, property, and franchises of any other railroad company incorporated under the laws of this or any other State or the United States, whose railroad within or without this State shall connect with or form a continuous line or system with the railroad of such company incorporated under this law, upon such terms as may be agreed upon. And it shall be lawful for any railroad company or corporation now or hereafter formed by the consolidation of one or more railroad companies, or corporations,

organized under the laws of this State, or under the laws of this State and any other States, with one or more companies or corporations organized under the laws of any other State, or under the laws of this and other States, to issue its bonds and stock as provided for in this Article, in such amounts as they may deem necessary for the purpose of paying or exchanging the same for or retiring any bonds or stocks theretofore issued by either of the said companies, or corporations, so merged, purchased, or consolidated, or for any other purpose, and to the amount authorized by the laws of the State under which either of said companies, or corporations, so consolidated was organized, and to secure the same, in case of bonds, by mortgages or trust deeds upon its real or personal property, franchises, rights, and privileges, whether within or without this State: Provided, that no railroad company shall make any contract under the provisions of this section with any other railroad company which is a competing line, that is calculated to defeat or lessen competition in this State or to encourage monopoly.

Acts 1890-1, SEC. 2614. All street-railroad companies may lease or  
p. 170.  
Secs. 6466, sell their road, franchises, and other property to any  
2607.  
other corporation created by the laws of this State for street-railroad purposes; and their franchises and property so sold shall remain liable in the hands of the lessee or purchaser for all debts or claims against the company making the conveyance. Nothing in this section shall be construed to authorize any such company to sell, lease, or otherwise dispose of any of its property or franchises so as to defeat or lessen competition, or to encourage monopoly.

Secs. 394, SEC. 4253. A contract which is against the policy of the  
3132, 1340,  
2545, 2665, law can not be enforced; such are contracts tending to  
2785, 6466,  
3465, 4247, corrupt legislation or the judiciary, contracts in general  
4258, 5299.  
in restraint of trade, contracts to evade or oppose the revenue laws of another country, wagering contracts, contracts of maintenance or champerty.

#### COURT DECISIONS.

Brown v. Jacobs Pharmacy Co., 115 Ga., 429; 57 L. R. A., 547.

Trust Company of Ga. v. State, 109 Ga., 736.

State v. Cen. of Ga. Ry. Co., 109 Ga., 716.

Central of Ga. Ry. Co. v. Collins, 40 Ga., 582.

Dady v. Georgia & A. Ry., 112 Fed., 838.

## IDAHO.

### CONSTITUTION.

ART. XI., SEC. 18. No incorporated company nor any association of persons or stock company, in the State of Idaho, shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through the stockholders or the trustees or assignees of such stockholders in any manner whatsoever, for the purpose of fixing the price or regulating the production of any article of commerce or of the produce of the soil or of consumption by the people; and that the legislature be required to pass laws for the enforcement thereof, by adequate penalties, to the extent, if necessary for that purpose of the forfeiture of their property and franchise.

### STATUTES (ACTS 1909).

SECTION 1. It shall be unlawful for any incorporated company, association of persons or stock company in this state, directly or indirectly to combine or make any contract with any incorporated company foreign or domestic, through their stockholders, or the trustees or assignees of such stockholders, or in any manner whatsoever, for the purpose of fixing the price or regulating the production of any article of commerce or of produce of the soil, or of consumption by the people. (An act to prohibit combinations in restraint of trade and to provide punishment for violations thereof, approved March 11, 1909; L. 1909, p. 297.)

SEC. 2. A violation of the provisions of Section 1 of this Act shall constitute a misdemeanor and be punished by a fine of not exceeding Five Thousand Dollars or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. (Id., Sec. 2.)

SEC. 3. If the violation of Section 1 of this Act is committed by an association of persons, or by a stock company, all of the persons forming such association or being

members of such stock company shall be equally liable and punishable as provided by Section 2 hereof, and if the offense is committed by a corporation, the directors of said corporation shall be held personally liable and punishable as provided by Section 2, and in addition thereto the court may impose against said corporation a fine not exceeding Five Thousand Dollars, and may declare its franchise forfeited. (Id., Sec. 3.)

ANTI-TRUST ACT OF 1911.

SECTION 1. That every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, within this state, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five thousand dollars (\$5,000) or by imprisonment not exceeding one (1) year, or by both such punishments, in the discretion of the court.

SEC. 2. That every person who shall monopolize, or attempt to monopolize or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce, within this state, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment not exceeding one (1) year, or by both said punishments, in the discretion of the court.

SEC. 3. That any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof), mentioned in the foregoing sections of this act, shall be forfeited to the state.

SEC. 4. That every person, corporation, joint stock company, or other association, engaged in business within this state, who shall enter into any contract, combination or conspiracy, or who shall give any direction or authority to do any act, for the purpose of driving out of business any other person engaged therein, or who for such purpose shall in the course of such business sell any article or product at less than its fair market value, or at a less price than it is accustomed to demand or receive therefor in any other place under like conditions; or who

shall sell any article upon a condition, contract or understanding that it shall not be sold again by the purchaser, or restrain such sale by the purchaser, shall be deemed guilty of a misdemeanor and on conviction thereof, shall be punished by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment not exceeding one (1) year, or by both said punishments, in the discretion of the court.

SEC. 5. That all the books of record and papers of every corporation, joint stock company, or other association, engaged in business within this state shall be subject to inspection by the attorney-general of this state, or by any agent he may designate for that purpose, and such corporation, joint stock company, or other association shall, at such times as he shall prescribe, make such returns duly verified by an officer of such corporation, joint stock company or association, as shall be by him prescribed either by general regulations or by special direction.

SEC. 6. That any president, director, treasurer, officer, corporator, copartner, associate or agent of such corporation, joint stock company or other association, who shall in its behalf do anything by this act prohibited to such corporation, joint stock company, or other association, or who shall support, vote for, aid and abet, or take part in doing such action by said corporation, joint stock company, or other association, or any instrumentality thereof, shall be liable to the penalties by this act provided.

SEC. 7. That any corporation, joint stock company, or other association that shall have been twice adjudged to have violated the provisions of this act by the final judgment of any court having jurisdiction of the question in any civil suit or proceeding in which said corporation, joint stock company, or other association shall have been a party, who shall thereafter violate this act, or who shall fail to make the returns herein required, at the time specified, shall no longer be allowed to engage in business within this state; provided, that such prohibition shall only be enforced after such corporation, joint stock company or other association shall have been enjoined against further engaging in such business, on an information or suit brought in a court of competent jurisdiction, by the attorney-general in behalf of this state. It

shall be the duty of the attorney-general in such case, unless he shall be satisfied that such corporation, joint stock company or other association has desisted and abstained and will in future desist and abstain from such violation, to enforce the provision by proceeding, either by information or by indictment, as he may in his discretion think best. Any corporation, joint stock company or other association which shall be charged with violating this act, and any president, director, treasurer, officer or agent thereof, may be joined as a party in any proceeding, civil or criminal, to enforce this act. If in the judgment of the attorney-general, such corporation, joint stock company or other association against which any civil proceeding may be instituted by one on which the public is so depending that the interruption of its business will cause serious public loss or inconvenience, he may in his discretion, refrain from proceeding to obtain a decree which will absolutely prevent the continuance of such business and may apply for a limited or conditional decree, or one to take effect at a future day, as the public interests shall seem to require. And if, in the judgment of the court before whom such proceeding may be pending, the interruption of the business of the defendant corporation, joint stock company or other association, will cause such serious public loss or inconvenience, the court may decline to enter an absolute decree enjoining it against proceeding with its business, and may enter a modified or conditional decree, or such decree to take effect at a future time, as justice shall require. The court may also in its discretion, enjoin such officers or agents or servants of such corporation, joint stock company or other association from continuing in its service, and enjoin any such corporation, joint stock company, or other association from continuing their employment therein, as the case shall seem to require.

SEC. 8. That any corporation, joint stock company or other association, and any president, director, treasurer, officer, corporation, co-partner, associate or agent thereof, who shall in its behalf, after the first day of January in the year 1912 engage in such business in violation of this act, shall for each offense, in addition to such penalty for contempt as the court in case of disobedience to its lawful order may impose, be punished by a fine not exceeding five thousand dollars (\$5,000) or by imprisonment not



exceeding one (1) year, or by both said punishments, in the discretion of the court.

SEC. 9. That every president, treasurer, general manager, agent or other person usually exercising the powers of such officers of any corporation, joint stock company, or other association, who has himself, in its behalf, violated, united to violate, or voted for or consented to the violation of any of the provisions of this act, shall thereafter be personally liable for all the debts and obligations of any such corporation, joint stock company, or other association, created while such person holds such office or agency, whether under the same or subsequent elections or appointments.

SEC. 10. That it shall be unlawful for any person or persons to offer, grant or give, or to solicit, accept or receive any rebate, concession, or service in respect of the transportation of any property within this state by any common carrier, whereby any such property shall, by any device whatever, be transported at a less rate than named in the tariffs published, and filed by such carrier, as is required by law, or charged others for like service. Every person who shall offer, grant, or give or solicit, accept or receive any such rebate, concession or service shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine of not less than five thousand dollars (\$5,000).

SEC. 11. That if any joint stock company, corporation or combination or any agent thereof, shall solicit, accept or receive any such rebate, concession or service as is hereinabove described to be unlawful, it shall be unlawful thereafter to transport within this state any article owned or controlled by such company, corporation or combination or produced or manufactured by it, by whomsoever the same may be owned or controlled. If any such joint stock company, corporation or combination, shall offer, grant or give any special prices, inducements or advantages for the sale of articles produced, manufactured, owned or controlled by it to purchasers in any particular locality in order to restrict or destroy competition in that locality in the sale of such articles, it shall be unlawful thereafter to transport within this state any article owned or controlled by it or produced or manufactured by it, by whomsoever the same may be owned or controlled; provided, however, that the prohibition im-

posed under this section shall not apply to any article purchased bona fide before decree made in pursuance hereof against the joint stock company, corporation or combination, producing, manufacturing, or theretofore owning or controlling the same; and provided further, that even after decree any such article may be relieved from the prohibition imposed under this section, if the owner thereof shall show to the satisfaction of the court having jurisdiction of the matter, hereinafter provided, that such articles were purchased, bona fide, without notice, and within thirty (30) days after the entry of such decree. Any transportation company, and any officer, agent or representative thereof, knowingly concerned in the transportation of articles within this state, contrary to the prohibition of this section, shall be punished by a fine of not less than five thousand dollars (\$5,000).

SEC. 12. That the several courts of record of this state having equity jurisdiction are hereby invested with jurisdiction to prevent and restrain all violations of this act, and especially the offering, granting, giving, soliciting, accepting or receiving any such rebate, concession, or service by any person or persons; and to prevent or restrain any such joint stock company, corporation or combination, who shall have solicited, accepted or received any such rebate, concession or service, or who shall have offered, granted or given any special prices, inducements or advantages in order to restrict or destroy competition in particular localities from engaging in commerce within this state. Such proceedings may be by way of petition setting forth the cause of action and praying that the acts hereby made unlawful shall be enjoined or otherwise prohibited. When the parties complained of shall be duly notified of such petition, the court shall proceed as soon as may be to the hearing and determination of the case, and upon such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just. The court may retain jurisdiction of the cause after the decree, for the purpose of such subsequent modification of the same as may be made to appear equitable and just in the premises.

SEC. 13. That whenever it shall appear to the court before which any civil proceedings under this act shall be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause

them to be summoned, whether they reside in the county where the court is held or not, and subpoenas to that end may be served in any county by the sheriff thereof.

SEC. 14. That any person who shall be injured in his business or property by any other person or persons by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any court of record in this state in the county in which the defendant or defendants reside or are found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of suit, including a reasonable attorney's fee.

SEC. 15. That the word "person" or "persons" as used in the sections of this act, shall be deemed to include all corporations, associations, combinations or concerns whatsoever.

SEC. 16. That in any suit in equity brought in any court of this state under this act wherein the state is complainant, the attorney-general may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to the judge of the court in which the case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day. An appeal from the final decree of the court will lie only to the supreme court.

SEC. 17. That in all prosecutions, hearing and proceedings under the provisions of this act, whether civil or criminal, no person shall be excused from the attending and testifying or from producing books, papers, contracts, agreements and documents before the courts of this state, or in obedience to the subpoena of the same, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required by him may tend to incriminate him or subject him to a penalty or forfeiture. Any person who shall neglect or refuse to make returns, attend and testify or answer any lawful requirement hereinbefore provided for, or produce books, papers, contracts, agreements and documents if in his custody, control or power to do so, in obedience to the subpoenas of the court, or lawful requirements of the attorney-general, shall be deemed guilty of a misdemeanor and upon conviction thereof by a court of competent

jurisdiction shall be punished by a fine not less than five hundred dollars (\$500) nor more than five thousand dollars (\$5,000). That whoever knowingly swears to a return or report required by this act that is false in any material particular, or knowingly swears to an answer to any of the requirements of this act, that is false, in any material particular, shall be deemed guilty of perjury and punished as provided by the laws of this state in reference to perjury.

Whoever shall knowingly prepare, or cause to be prepared a report, return or answer required by this act that is false, as aforesaid, shall be guilty of subornation of perjury and punished as provided by law.

SEC. 18. That there is hereby appropriated out of any money in the treasury not otherwise appropriated to be expended under the direction of the governor and attorney-general of this state, the sum of one thousand dollars (\$1,000) for the enforcement of the provisions of this act in the employment of special counsel and agents by the governor and attorney-general to conduct proceedings, suits and prosecutions under this act, in the courts of this state. It is hereby made the duty of the attorney-general, and the county attorneys of the state under direction of the attorney-general, to institute and prosecute such proceedings as may be necessary to carry into effect all of the provisions of this act; provided, that no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, or any proceedings, suit or prosecution under this act; provided, further, that no person testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

Approved March 10th, 1911. (L. 1911, c. 215, p. 688.)

## ILLINOIS.

### STATUTES (ACTS 1907).

If any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership or individual or other association of persons whosoever, shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of merchandise or commodity, or shall enter into, become a member of or party to any pool, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state, such corporation, partnership, or individual or other association of persons shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to indictment and punishment as provided in this act; provided, however, that in the mining, manufacture or production of articles of merchandise, the cost of which is mainly made up of wages, it shall not be unlawful for persons, firms or corporations doing business in this state to enter into joint arrangements of any sort, the principal object or effect of which is to maintain or increase wages. (Act of June 11, 1891; Laws 1891, p. 206, as amended to 1907, Sec. 1.)

It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employees, or the directors or stockholders of any corporation to enter into any combination, contract or agreement with any person or persons, corporations or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen

the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article. (Act supra, Sec. 2.)

If a corporation or a company, firm or association, shall be found guilty of a violation of this act, it shall be punished by a fine in any sum not less than five hundred dollars (\$500) nor more than two thousand dollars (\$2,000) for the first offense; and for the second offense not less than two thousand dollars (\$2,000) nor more than five thousand dollars (\$5,000); and for the third offense not less than five thousand dollars (\$5,000) nor more than ten thousand dollars (\$10,000), and for every subsequent offense and conviction thereof, shall be liable to a fine of fifteen thousand dollars (\$15,000); provided, that in all cases under this act either party shall have the right of trial by jury. (Act supra, Sec. 3.)

Any president, manager, director or other officer or agent or receiver of any corporation, company, firm or association, or any member of any company, firm or association, or any individual found guilty of a violation of the first section of this act, may be punished by a fine of not less than two hundred dollars (\$200), nor to exceed one thousand dollars (\$1,000), or be punished by confinement in the county jail not to exceed one year, or both, in the discretion of the court before which such conviction may be had. (Act supra, Sec. 4.)

Any contract or agreement in violation of any provision of the preceding sections of this act, shall be absolutely void. (Act supra, Sec. 5.)

Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act, shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment. (Act supra, Sec. 6.)

The fines hereinbefore provided for may be recovered in an action of debt, in the name of the people of the state of Illinois. If, upon the trial of any cause instituted under this act to recover the penalties as provided for in section 3, the jury shall find for the people, and that the defendant has been before convicted of a violation of the provisions of this act, they shall return such finding with their verdict, stating the number of times

they find defendant so convicted, and shall assess and return with their verdict the amount of the fine to be imposed upon the defendant in accordance with said section 3; provided, that in all cases under the provisions of this act, a preponderance of evidence in favor of the people shall be sufficient to authorize a verdict and judgment for the people. (Act supra, Sec. 7.)

It shall be the duty of the secretary of state, on or about the first day of September of each year, to address to the president, secretary or treasurer of each incorporated company doing business in this state, whose post-office address is known or may be ascertained, a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this act, and to require an answer, under oath, of the president, secretary or treasurer, or any director of said company. A form of affidavit shall be enclosed in said letter or inquiry, as follows:

AFFIDAVIT.

State of Illinois, County of \_\_\_\_\_, ss.

I, \_\_\_\_\_, do solemnly swear that I am the \_\_\_\_\_ (president, secretary, treasurer or director) of the corporation known and styled \_\_\_\_\_ duly incorporated under the laws of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and now transacting or conducting business in the state of Illinois, and that I am duly authorized to represent said corporation in the making of this affidavit; and I do further solemnly swear that the said \_\_\_\_\_ known and styled as aforesaid, has not, since the \_\_\_\_\_ day of \_\_\_\_\_ (naming the day upon which this act takes effect), created, entered into or become a member of, or a party to, and was not, on the \_\_\_\_\_ day of \_\_\_\_\_ nor at any day since that date, and is not now a member of or a party to, any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person or association of persons to regulate or fix the price of any article of merchandise or commodity; and that it has not entered into or become a member of, or a party to, any pool, trust, agreement, contract, combination or confederation

to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in the state; and that it has not issued and does not own any trust certificates, and for any corporation, agent, officer or employee or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees; with the intent to limit or fix the price or lessen the production and sales of any articles of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

-----,  
(President, Secretary, Treasurer or Director.)

Subscribed and sworn to before me, a -----  
within and for the county of ----- this ----- day  
of -----, 18---

(Seal.) -----

And on refusal to make oath in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, the secretary of state shall certify that fact to the attorney-general, whose duty it shall be to direct the state's attorney of the county wherein such corporation or corporations are located, and it is hereby made the duty of the state's attorney under the direction of the attorney-general, at the earliest practicable moment, in the name of the people of the state of Illinois, and at the relation of the attorney-general to proceed against such corporation for the recovery of a penalty of fifty dollars for each day after such refusal to make oath, or failure to make said oath within the thirty days from the mailing of said notice; or the attorney-general may, by any proper proceedings in a court of law or chancery, proceed, upon such failure or refusal, to forfeit such charter of such incorporated company or association incorporated under the general laws, or by any special law of this state, and to revoke the rights of any foreign corporation located herein to do business in this state; pro-



vided, however, that before any such suit or prosecution as contemplated by this act shall be instituted against any person, persons, copartnerships or corporations failing to file such affidavits within said thirty days from the mailing of such notice from the secretary of state, as aforesaid, it shall be the duty of the state's attorney of the county where such person, copartnership or corporation is located, to give such person, copartnership or corporation ten days' notice in writing of the intention to institute such suit or proceeding; and provided further, that if such person, copartnership or corporation shall then within such period of ten days make and file such affidavit in the office of the secretary of state, no penalty shall attach and no suit or proceeding shall be instituted against such person, copartnership or corporation. (Act supra, Sec. 7a, as amended by Act of May 25, 1907.)

It shall be the duty of the secretary of state, at any time, upon satisfactory evidence that any company or association of persons, duly incorporated under the laws of this or any other state, doing business in this state, has entered into any trust, combination or association in violation of the preceding sections of this act, to demand that it shall make the affidavit, as above set forth in this act, as to the conduct of its business. In case of failure of compliance on the part of the corporation, then the same procedure shall ensue as is provided in section 7a of this act; provided, that no corporation, firm, association or individual shall be subject to any criminal prosecution by reason of anything truthfully disclosed by the affidavit required by this act, or truthfully disclosed in any testimony elicited in the execution thereof. The secretary of state is hereby authorized and required to charge and collect of each corporation a fee of one dollar for receiving and filing the affidavit herein provided for, to be accounted for as other fees received by him. To enable the secretary of state to discharge the additional duties devolving upon him in the execution of this act there is hereby appropriated out of any funds in the state treasury not otherwise appropriated, or so much thereof as may be necessary, the sum of six thousand dollars per annum, payable to the secretary of state on his order upon proper vouchers as required by law; provided, that corporations organized under the building loan and homestead association laws of this state are excluded from the provisions of this act. (Act supra, Sec. 7b.)

It shall be the duty of the prosecuting attorneys in their respective jurisdictions, and the attorney-general, to enforce the foregoing provisions of this act, and any prosecuting attorney of any county, securing a conviction under the provisions of this act, shall be entitled to such fee or salary as by law he is allowed for such prosecution. When there is a conviction under this act, the informer shall be entitled to one-fifth of the fine recovered, which shall be paid him when the same is collected. All fines recovered under the provisions of this act shall be paid into the county treasury of the county in which the suit is tried, by the person collecting the same, in the manner now provided by law, to be used for county purposes. (Act supra, Sec. 8.)

#### TRUSTS AND COMBINES (ACT 1893).

(Held unconstitutional. See below.)

AN ACT To define trusts and conspiracies against trade, declaring contracts in violation of the provisions of this act void, and making certain acts in violation thereof misdemeanors, and prescribing the punishment therefor and matters connected therewith.

SEC. 1. *Be it enacted by the People of the State of Illinois, represented in General Assembly,* That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or of two or more of them for either, any or all of the following purposes: First—To create or carry out restrictions in trade. Second—To limit or reduce the production, or increase or reduce the price of merchandise or commodities. Third—To prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities. Fourth—To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, upon any article or commodity of merchandise, produce or manufacture intended for sale, use or consumption in this state; or to establish any pretended agency whereby the sale of any such article or commodity shall be covered up and made to appear to be for the original vendor, for a like purpose or purposes, and to enable such original vendor or manufacturer to control the wholesale or retail price of any such article or commodity after the title to

such article or commodity shall have passed from such vendor or manufacturer. Fifth—To make or enter into, or examine or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of, or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or card, or list price, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

SEC. 2. That any corporation holding a charter under the laws of this state which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

SEC. 3. For a violation of any of the provisions of this act by any corporation mentioned herein it shall be the duty of the attorney-general or prosecuting attorney, upon his own motion, to institute suit or quo warranto proceedings at any county in this state in which such corporation exists, does business, or may have a domicile, for the forfeiture of its charter rights and franchise, and the dissolution of its corporate existence.

SEC. 4. Every foreign corporation violating any of the provisions of this act is hereby denied the right and prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proper proceedings in any county in which such foreign corporation does business, in the name of the state on his relation.

SEC. 5. Any violation of either or all of the provisions of section one of this act shall be and is hereby declared to be a conspiracy against trade, and a misdemeanor; and any person who may be or may become engaged in any

such conspiracy or take part therein or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant, or employee, or in any other capacity knowingly carry out any of the stipulations, purposes, prices, rates, orders thereunder or in pursuance thereof shall be punished by fine not less than two thousand dollars nor more than five thousand dollars.

SEC. 6. In any indictment or information for any offense named in this act it is sufficient to state the purposes and effects of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how or where it was created.

SEC. 7. In prosecutions under this act it shall be sufficient to prove that a trust or combination as defined herein exists, and that the defendant belonged to it or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all.

SEC. 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

SEC. 9. The provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser.

SEC. 10. Any purchaser of any article or commodity, from any person, firm, corporation or association of persons, or of two or more of them, transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity and may plead this act as a defense to any suit for such price or payment.

Approved June 20, 1893.

#### ANTITRUST LAW HELD VOID.

UNION SEWER PIPE COMPANY *v.* CONNELLY.

U. S. CIRCUIT COURT,  
NORTHERN DISTRICT OF ILLINOIS,  
*January 29, 1900.*

#### STATEMENT.

Plaintiff brings suit on promissory notes given by defendant for balance due on purchases of sewer pipe.

Defendant gives notices of three special defenses, all based upon the theory that plaintiff was a combination in restriction of trade, contrary—(1) to the common law; (2) to the so-called Sherman Act; (3) to the statute of Illinois taking effect July 1, 1893.

#### OPINION.

As to the first special defense: "The fact that one party to a contract is engaged in illegal acts will not, at common law, avail the other party as a defense to the enforcement of a contract in itself legal."

As to the second special defense: The so-called Sherman Act does not affect contracts which "merely indirectly, remotely, incidentally, or collaterally regulate to a greater or lesser degree interstate commerce among the States."

As to the third special defense: The statute of July 1, 1893, provides, in section 9, that "the provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser."

The statute, by virtue of this clause, contains both class and special legislation, and is in contravention of the fourteenth amendment of the Federal Constitution, which forbids any State to deprive any person of the equal protection of the laws, and also in contravention of section 22 of article 4 of the constitution of Illinois, which says: "In all other cases where a general law can be made applicable no special law shall be enacted."

It is suggested that the said ninth section may be declared void without affecting the validity of the remaining clauses of the act. By such a decision the courts would make the act binding upon those classes of persons which the legislature especially exempted from its provisions. This would be judicial legislation of the most flagrant character. Clause 9 taints the whole act and renders it all void.

Verdict must be given for the plaintiff.

#### COURT DECISIONS.

Ford et al. *v.* Chicago Milk Shippers' Association, 155 Ill., 166.

The Distilling and Cattle Feeding Co. *v.* The People ex rel. M. T. Moloney, Attorney-General, 156 Ill., 488.

*Levin v. Chicago Gas Light and Coke Co. et al.*, 64 Ill. App., 393.

*The People ex rel. William W. McIlhany v. The Chicago Live Stock Exchange*, 170 Ill., 556.

*Harding et al. v. American Glucose Company et al.*, 55 N. E. Rep., 577.

*People v. Chicago Gas Trust Co.*, 130 Ill. 268, 22 N. E. 798, 8 L. R. A. 497, 17 Am. St. Rep., 319.

*Dunbar v. Am. Tel. & Tel. Co.*, 238 Ill., 456; 87 N. E. 521.

*Distilling Company v. People*, 156 Ill. 448; 41 N. E. 188, 47 Am. St. Rep. 200.

*Harding v. American Glucose Co.* 182 Ill. 551, 55 N. E. 577, 64 L. R. A. 738.

*People v. Chicago Live Stock Exchange*, 170 Ill. 556, 39 L. R. A. 373.

*More v. Bennett*, 140 Ill. 69, 29 N. E. 888.

*Gustafson v. Swanson*, 131 Ill. App. 585.

*Wiley & Drake v. National Wall Paper Co.*, 70 Ill. App. 543.

*People v. Butler St. Foundry & Iron Co.* 201 Ill. 236, 66 N. E. 349.

*Chicago W. & V. Coal Co. v. People*, 214 Ill. 421, 73 N. E. 770.

*Lanyon v. Garden City Sand Co.*, 223 Ill. 616, 79 N. E. 313.

*Inter-Ocean Pub. Co. v. Associated Press*, 184 Ill. 438, 56 N. E. 822, 48 L. R. A. 568, 75 Am. St. Rep. 568.

#### COMMON-LAW CASES.

*Craft et al. v. McConoughy*, 79 Ill., 346.

*The Chicago Gas Light and Coke Co. v. The People's Gas Light and Coke Co.*, 121 Ill., 530.

*The People ex rel. Francis B. Peabody v. The Chicago Gas Trust Co.*, 130 Ill., 268.

## INDIANA.

### STATUTES.

SECS. 3878, 3879. All arrangements, contracts, agreements, trusts or combinations made with a view to lessen free competition in transportation or sale of articles imported or domestic are void to reduce or control the price of such articles. The act provides for forfeiture of the franchise of any corporation violating these provisions, and requires the attorney-general to proceed against corporations violating the provisions of the act and enforce the penalties prescribed.

SEC. 3884. All agreements to prevent, induce or procure any wholesale or retail dealer or manufacturer from selling to any dealer or mechanic or artisan, or any wholesaler, retailer or manufacturer who shall refuse to sell to such persons for the reason that such person is not a member of a combination, etc., shall be guilty of conspiracy in restraint of trade, and such agreements are void. Penalty, \$50 to \$200, to which may be added imprisonment in county jail for any period not exceeding one year.

SEC. 3885. All agreements with object of refusing to furnish any article required in manufacture of any article of merchandise when the party or corporation can furnish same, or by charging more than the regular and ordinary price, or refusing to do any act that would cause such party to cease to manufacture such article or hinder such person or corporation from so doing, shall be void, with penalty of forfeiture of franchise. Every foreign corporation so guilty is denied right to do business in state.

ANTI-TRUST LAW OF 1907 (R. S. 1908, SECS. 3866-92).

The following act was passed by the legislature of 1907:

ANTI-TRUST—RESTRAINT OF TRADE ILLEGAL—PENALTY.

SECTION 1. That every scheme, design, understanding, contract, combination in the form of a trust or otherwise,

or conspiracy in restraint of trade or commerce, or to create or carry out restrictions in trade or commerce, or to deny or refuse to any person or persons full participation, on equal terms with others, in any telegraphic service transmitting matter prepared or intended for public use, or to limit or reduce the production, or increase or reduce the price of merchandise or any commodity, natural or artificial, or to prevent competition in manufacturing, within or without this state, is hereby declared to be illegal, but none of the provisions of this act shall be construed to apply to (or) repeal, modify or limit, or make unlawful any powers, rights or privileges now existing or conferred by law upon any person, copartnership, association or corporation. Every person who shall make any such contract or engage in any such combination or conspiracy, or enter into any such scheme, design or understanding, or do within this state any act in furtherance of any such contract, combination, conspiracy, scheme, design or understanding entered into without this state, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five thousand dollars, to which may be added imprisonment in the county jail or workhouse for a term not exceeding one year, in the discretion of the court or jury trying the cause; provided, however, that it shall be a good defense to any action growing out of any violation of the provisions of this act or any other act or common law relating to the subject matter of this act if the defendant shall plead and by a fair preponderance of the evidence prove that such violation is not in restraint of trade or commerce or does not restrict trade or commerce or limit or reduce the production or increase or reduce the price of merchandise or any commodity natural or artificial or prevent competition in manufacturing.

#### MONOPOLY—PENALTY.

SEC. 2. Every person who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize any part of the trade or commerce within this state, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five thousand dollars, to which may be added imprisonment in the county jail or work-



house for a term not exceeding one year, in the discretion of the court or jury trying the cause.

#### SCHEMES TO RESTRICT COMPETITION—PENALTY.

SEC. 3. Any and all schemes, designs, understandings, plans, arrangements, contracts, agreements or combinations to limit, restrain, retard, impede or restrict bidding for the letting of any contract for private or public work, directly or indirectly, or to in any manner combine or conspire to stifle or restrict free competition for the letting of any contract for private or public work, are hereby declared illegal, and any person who shall directly or indirectly engage in any scheme, design, understanding, plan, arrangement, contract, agreement or combination to limit, restrain, retard, impede or restrict bidding for the letting of any contract for private or public work, or in any manner combine or conspire to stifle or restrict free competition for the letting of any contract for private or public work, shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in any sum not exceeding five thousand dollars, to which may be added imprisonment in the county jail or workhouse for a term of not more than one year, in the discretion of the court or jury trying the cause.

#### COLLUSION OR FRAUD—WHEN PRINCIPAL NOT LIABLE.

SEC. 4. If there shall be collusion or fraud of any kind or character among the bidders at the letting of any contract or work as provided in section 3 of this act then the principal who lets the contract or work, or for whom the contract was let, shall not be liable for such letting or on account of said contract, or work, or any part thereof, to the successful bidder to whom the contract or work was let, his successors or assigns, if such successful bidder be a party, directly or indirectly, to such collusion or fraud on such contract or letting, or for any work, materials furnished or thing done in discharge thereof or with reference thereto, and if, before notice of such collusion or fraud, payment or partial payment thereon or therefor shall have been made, such principal may at any time within five years from the date of the last payment made thereon or therefor in an appropriate action in any court of competent jurisdiction in this state

recover to the full amount of such payment or payments with interest to date of judgment thereon and attorney's fees against such successful bidder, and such recovery shall not be a bar to any action, either civil or criminal, brought against such bidder on account of any violation of this act on behalf of the state by the attorney-general, a prosecuting attorney or otherwise.

ATTORNEY-GENERAL—PROSECUTORS—DUTIES.

SEC. 5. It shall be the duty of the attorney-general and of the prosecuting attorney of each judicial circuit to institute appropriate proceedings to prevent and restrain violations of the provisions of this act or any other act or the common law relating to the subject matter of this act. All such proceedings shall be in the name of the state of Indiana upon relation of the proper party. The attorney-general may file such proceedings, either in term time or in vacation, upon his own relation, or that of any private person, in any circuit or superior court of the state, without applying to such court for leave, when he shall deem it his duty so to do. Such proceedings shall be by information filed by any prosecuting attorney in a circuit or superior court of the proper county upon his own relation whenever he shall deem it his duty so to do, or shall be directed by the court or governor or attorney-general, and an information may be filed by any taxpayer on his own relation. If judgment or decree be rendered any domestic corporation or against any person claiming to be a corporation, the court may cause the costs to be collected by execution against the corporation or against the person claiming to be a corporation, or by attachment against any or all of the directors or officers of the corporation, and may restrain the corporation or any director, agent, employee or stockholder and appoint a receiver for its property and effects, and take an accounting and make distribution of its assets among its creditors, and exercise any other power or authority necessary and proper for carrying out the provisions of this act. If judgment or decree be rendered against any corporation incorporated under the laws of the United States, or of any district or territory thereof, or of any state other than this state, or of any foreign country, the court may cause the costs to be collected as hereto-

fore provided, and may render judgment and decree of ouster perpetually, excluding such corporation from the privilege of transacting business in the state of Indiana, and forfeiting to the school fund any or all property of such corporation within the state and shall exercise such power and authority with regard to the property of such corporation as may be exercised with regard to that of domestic corporations.

#### INTERROGATORIES BY PLAINTIFF—EXAMINATIONS.

SEC. 6. In all proceedings instituted under and pursuant to the foregoing section the plaintiff may propound interrogatories to the defendant or defendants to be answered by such defendant or defendants under oath, as is now provided by law in civil actions, and if any defendant to whom interrogatories be propounded as aforesaid be a corporation, then such interrogatories shall be answered by the highest officer of such corporation, or by any other officer, agent or employee of such corporation designated by the plaintiff. The plaintiff in any such action shall be entitled upon motion to an order for an examination under oath before trial of any defendant, or all the defendants in such action, and if any defendant in such action be a corporation, then of any officer, agent or employee of any such defendant corporation, concerning any or all of the facts alleged in the information or other pleadings in such cause, the said defendant shall be given five days' notice by the plaintiff of the time and place of the taking of said examination, but such officer, agent or employee shall not be compelled to attend such examination except in the county where he resides or where the principal office or place of business of such corporation be situate in this state. If such defendant corporation be incorporated under the laws of the United States, or of any district or territory thereof, or of any state other than the state of Indiana, or of any foreign country, and the officer, agent or employee to be examined be without the jurisdiction of this state, then such defendant shall produce the officer, agent or employee, to be examined as aforesaid at some place in the city or town where the principal office or place of business of such defendant be situate, upon five days' notice being served upon the attorneys of such defendant corporation, of the

time and place fixed for the examination of such officer, agent or employee. In any examination of any defendant, or of any officer, agent or employee of any defendant corporation, such defendant officer, agent or employee may be compelled upon notice to produce for inspection by the plaintiff, and to testify concerning the same, or for use in evidence upon the trial, or both, all books, papers, documents or writings pertaining, or in anywise relating, to the facts, or any of them, stated in the information or other pleadings filed in the cause. In such notice to produce for inspection and testimony or for trial, or both, it shall only be necessary to notify the defendant or the attorney or attorneys of the defendant to produce at the time and place fixed in the notice, all books, papers, documents or writings pertaining or in anywise relating to the facts stated in the information or other pleadings filed, and it shall not be necessary to state in such notice the particular books, papers, documents or writings to be produced at such time and place. Such examinations shall be taken before an officer authorized to take depositions and may be continued from day to day. Upon the failure or refusal of any defendant to comply with any order made as aforesaid to answer interrogatories, or for the examination of the defendant, the officer, agent or employee of any defendant corporation or upon the failure or refusal of any defendant corporation to produce any officer, agent or employee for examination when notified as aforesaid, or upon the failure or refusal of any defendant to produce books, papers, documents and writings when notified as aforesaid, then all pleadings of such defendant so failing to comply with such order or notice shall be stricken from the files upon motion supported by affidavit, and the allegations of the information as to such defendant in default shall be taken as confessed and judgment and decree shall be entered accordingly.

#### INJURED PERSON MAY SUE—DAMAGES—PENALTY.

SEC. 7. Any person who shall be injured in his business or property by any person or corporation by reason of the doing by any person or persons, of anything forbidden or declared to be unlawful by this act, may sue therefor in the circuit or superior court of any county in which the defendant or defendants, or any of them, re-

side or are found without respect to the amount in controversy, and shall recover a penalty of threefold the damages which may be sustained, together with the costs of suit, including a reasonable attorney's fee.

#### IMPORTANCE OF CASE—CERTIFICATE.

SEC. 8. In any proceeding under this act the attorney-general or prosecuting attorney may file with the clerk of the court a certificate that in his opinion the case is of general importance, a copy of which shall be immediately furnished by said clerk to the judge or to each of the judges of the court wherein the proceedings may be pending, and the court shall thereupon make the proper orders in the premises.

#### COSTS—HOW PAID—APPROPRIATION.

SEC. 9. Whenever an information is filed by the attorney-general or by any prosecuting attorney, such officer shall not be liable for costs; but when it is filed upon the relation of a private person, he shall be liable for costs unless the same are adjudged against the defendant. In all proceedings instituted under the provisions of this act by the attorney-general or by the prosecuting attorney on the order and direction of the court, attorney-general or the governor, all necessary cost and expenses of the prosecution shall be paid out of moneys in the state treasury not otherwise appropriated, if such costs cannot be collected from the defendant or defendants, in case judgment be rendered against such defendant or defendants, and it shall be the duty of the auditor of state, upon receipt from the attorney-general of a statement of the costs and expenses of any such prosecution, to draw his warrant upon the treasurer of state for the amount so certified; provided, however, that the attorney-general shall not involve the state in any extraordinary expense for experts or other assistants, without first obtaining the consent of the governor, and twenty thousand dollars is hereby appropriated from any funds of the state not otherwise appropriated to defray the expenses of such prosecutions by the attorney-general for the next ensuing period of two years after the passage of this act, and twenty thousand dollars biennially thereafter for the same purposes. Such prosecuting attorney shall also

be allowed by the court trying such cause reasonable compensation for his services, and such allowances shall be paid as part of the costs and expenses of such prosecution.

#### PERSON OR PERSONS DEFINED.

SEC. 10. The word "person" or "persons," whenever used in this act, shall be deemed to include corporations and associations, joint stock companies, partnerships, limited or otherwise, existing under or authorized by the laws of the state of Indiana, or of the United States, or of any state, territory or district of the United States, or of any foreign country.

#### IMMUNITY OF WITNESSES.

SEC. 11. Any person or officer, agent or employee of a corporation may be examined as a witness or a party, as in other cases, in any civil action instituted under the provisions of this act, and required to disclose all the facts relevant to the case within his knowledge, as before provided, but the testimony of such witness or party or any answer to any question propounded by him in such examination shall not be used against such witness or party in any criminal prosecution; provided, however, that such exemption shall be personal to such witness, and shall not exempt or render immune the corporation of which witness shall be an officer, agent or employee, and such corporation shall be liable for any violation of this act as if such officer, agent or employee had not so testified.

#### ACT CUMULATIVE.

SEC. 12. The provisions of this act shall be held cumulative of, or supplemental to, each other, and of all other laws in any way affecting them, or any matter which in any manner is the subject of this act in this state, and cumulative of and supplemental to the common law of this state relative thereto, or to any thereof.

#### COURT DECISIONS.

*Sterling Remedy Co. v. Wyckoff*, S. & B. 154 Ind. 437, 56 N. E. 911.

*Knight & Jillson Co. v. Miller*, 172 Ind., 27.

*Chicago, etc., R. R. Co. v. Southern Indiana Ry. Co.*, 38 Ind. App., 234.

*Over v. Byram Foundry Co.*, 37 Ind. App., 452.

## IOWA.

### STATUTES.

SEC. 5060. Any corporation organized under the laws of this or any other state or country for transacting or conducting any kind of business in this state, or any partnership, association or individual, creating, entering into or becoming a member of or a party to any pool, trust, agreement, contract, combination, confederation or understanding with any other corporation, partnership, association or individual, to regulate or fix the price of any article of merchandise or commodity, or to fix or limit the amount of quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state, shall be guilty of a conspiracy.

SEC. 5061. No corporation shall issue or own trust certificates, and no corporation, nor any agent, officer, employee, director or stockholder of any corporation, shall enter into any combination, contract or agreement with any person or corporation, or with any stockholder or director thereof, for the purpose of placing the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with intent to limit or fix the price or lessen the production or sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

SEC. 5062. Any corporation, company, firm, or association violating any of the provisions of the two preceding sections shall be fined not less than \$500 nor more than \$5,000; and any president, manager, director, officer, agent or receiver of any corporation, company, firm or association, or any member of any corporation, company, firm or association, or any individual, found guilty of a violation thereof, shall be fined not less than five hundred nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year or both.

SEC. 5063. All contracts or agreements in violation of any provisions of the three preceding sections shall be void.

SEC. 5064. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provisions of the four preceding sections shall not be liable for the price or payment thereof, and may plead such provisions as a defense to any action for such price or payment.

SEC. 5065. Any corporation created or organized by or under the law of this state, which shall violate any provision of the five preceding sections, shall thereby forfeit its corporate right and franchise, as provided in the next section.

SEC. 5066. The secretary of state, upon satisfactory evidence that any company or association of persons incorporated under the laws of this state have entered into any trust, combination or association in violation of the provisions of the six preceding sections, shall give notice to such corporation that, unless it withdraws from and severs all business connection with said trust, combination or association, its articles of incorporation will be revoked at the expiration of thirty days from date of such notice.

SEC. 5067. County attorneys, in their counties, and the attorney-general shall enforce the provisions of a public nature in the seven preceding sections, and any county attorney or the attorney-general securing a conviction under the provisions thereof shall be entitled, in addition to such fee or salary as by law he is allowed for such prosecution, to one-fifth of the fine recovered. When the attorney-general and county attorney act in conjunction in the prosecution of any action under such provisions, they shall be entitled to one-fourth of the fine recovered, which they shall divide equally between them, where there is no agreement to the contrary. It shall be the duty of the grand jury to inquire into and ascertain if there exists any pool, trust or combination within their respective counties.

That it shall be unlawful for any person, company, partnership, association or corporation owning or operating any business of buying, selling, handling, consigning or transporting any commodity or any article of commerce, to enter into any agreement, contract or combina-



tion with any other dealer or dealers, partnership, company, corporation or association of dealers, whether within or without the State, engaged in like business, for the fixing of the price or prices at which any commodity or any article of commerce should be sold by different dealers or sellers; or to divide between said dealers the aggregate or net proceeds of the earnings of such dealers and sellers, or any portion thereof; or to form, enter into, maintain, or contribute money or anything of value to any trust, pool, combination or association of persons of whatsoever character or name, which has for any of its objects the prevention of full and free competition among buyers, sellers or dealers in any commodity or any article of commerce; or to do or permit it to be done by his or their authority any act or thing whereby the free action of competition in the buying or selling of any commodity or any article of commerce is restrained or prevented. (33 G. A., Sec. 1.)

That in case any person, company, partnership, corporation or association, trust, pool or combination of whatsoever name shall do, cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, such person, partnership, company, association, corporation, trust, pool or combination shall be liable to the person, partnership, company, association or corporation injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act. (Id., Sec. 2.)

That any person, partnership, company, association or corporation subject to the provisions of this act, or any person, trust, combination, pool or association, or any director, officer, lessee, receiver, trustee, employee, clerk, agent or any person acting for or employed by them, who shall violate any of the provisions of Section 1 of this act, or who shall aid and abet in such violation, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined any sum not less than five hundred dollars (\$500) and not exceeding two thousand (\$2,000) or imprisoned in the county jail for a period not exceeding six months, or both, at the discretion of the court. It shall be the duty of the grand jury to enquire into and ascertain if there exists any pool, trust, combination or violation of any provisions in this act, in their respective counties. (Id., Sec. 3.)

See also chapter 169 of the Laws of 1906, relating to unfair commercial discrimination in petroleum products.

#### EVIDENCE.

SEC. 4612. But when the matter sought to be elicited would tend to render him criminally liable, or to expose him to public ignominy, he is not compelled to answer, except as provided in the next section. But in prosecutions against gaming, betting, lotteries, dealing in options, creating, entering into or becoming a member of, or a party to any pool, trust, agreement, contract, combination, confederation or understanding with any other corporation, partnership, association or individual to regulate or fix the price of any article of merchandise or commodity or to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state, and keeping gambling houses, or rooms for illegal use or disposal of intoxicating liquors, no witness shall be excused from giving testimony upon the ground that his testimony would tend to render him criminally liable or expose him to public ignominy; but any matter so elicited shall not be used against him, and said witness shall not be prosecuted for any crime connected with or growing out of the act on which the prosecution is based in the cause in which his evidence is used for the state, under the provisions of this section. (As amended by act April 19, 1913.)

#### COURT DECISIONS.

*Beechley v. Mulville et al.*, 102 Ia., 602; 70 N. W. Rep., 107; 71 N. W. 428.

*Wilson v. Morse*, 117 Iowa, 581; 91 N. W., 823.

*Dorn v. Cooper*, 117 N. W., 1.

## KANSAS.

### STATUTES.

#### ACT OF 1887.

1. That it shall be unlawful for any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation, or association, to enter into any agreement, contract or combination with any other grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, for the pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnerships, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle, or stock of any kind or nature whatever; and in case of any agreement, contract or combination for such pooling of prices of different and competing dealers and buyers, or to divide between them the aggregate or net proceeds of the earnings of such dealers and buyers, or any portion thereof, or for fixing the price which any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall pay for grain, hogs, cattle, or stock of any kind or nature whatever, each day of its continuance shall be deemed a separate offense. (L. 1887, c. 175, Sec. 1; G. S., Sec. 5182.)

2. That in case any grain dealer or dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, shall do or cause to be done or permit to be done any

act, matter or thing in this act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing in this act required to be done, such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association, shall be liable to the person or persons injured thereby to the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as a part of the costs in the case; and in any such action brought for the recovery of damages the court before whom the same shall be pending may compel any grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any person or persons, partnership, company, corporation or association subject to the provisions of this act, or any director, officer, receiver, trustee, agent, employe, or clerk of them or either of them, defendant in such suit, to attend, appear and testify in such case, and may compel the production of the books and papers of such grain dealer or grain dealers, partnership, company, corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association party to such suit. The claim that any such testimony or evidence may tend to criminate the person giving such evidence shall not excuse such witness from testifying, but such evidence or testimony shall not be used against such person in the trial of any criminal proceeding. (Id., Sec. 2; G. S., Sec. 5183.)

3. That any grain dealer or grain dealers, partnership, company, or corporation or association of grain dealers, or any other person or persons, partnership, company, corporation or association subject to the provisions of this act, or any director, officer, or any receiver, trustee, clerk, or lessee or agent, or person acting for or employed by them or either of them, who alone or with any other partnership, company, corporation, association, person or party, shall wilfully do or cause to be done or shall wilfully suffer to permit to be done any act, matter or thing in this act prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter or thing in this act required to be done, or shall cause or willingly suffer or permit any act,

matter or thing so directed or required by this act to be done, not to be so done, or shall aid or abet such omission or failure, or shall be guilty of any infraction of this act, or shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof be fined in any sum not exceeding one thousand dollars, or imprisonment in the jail of the county not exceeding six months, or both, in the discretion of the court; and shall moreover be liable to the suit of the party injured or damaged. (Id., Sec. 3; G. S., Sec. 5184.)

## ACT OF 1889.

1. That all arrangements, contracts, agreements, trusts, or combinations between persons or corporations made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this state, or in the product, manufacture or sale of articles of domestic growth or product of domestic raw material, or for the loan or use of money, or to fix attorneys' or doctors' fees, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations, designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such products or articles, or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of money to the borrower, or any other services, are hereby declared to be against public policy, unlawful and void. (L. 1889, c. 257, Sec. 1; G. S., Sec. 5185.)

2. It shall not be lawful for any corporation to issue or to own trust certificates, other than the regularly and lawfully authorized stock thereof, or for any corporation, agent, officer or employes, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish

the manufacture or output of any such article. (Id., Sec. 2; G. S., Sec. 5186.)

3. That all persons entering into any such arrangement, contract, agreement, trust or combination, or who shall after the passage of this act attempt to carry out or act under any such arrangement, contract, agreement, trust or combination described in section one or two of this act, either on his own account or as agent or attorney for another, or as an officer, agent or stockholder or any corporation, or as a trustee, committee, or in any capacity whatever, shall be guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not less than one hundred dollars and not more than one thousand dollars, and to imprisonment not less than thirty days and not more than six months, or to both such fine and imprisonment, in the discretion of the court. (Id., Sec. 3; G. S., Sec. 5187.)

4. That any person or corporation injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section one or two of this act, may sue for and recover in any court of competent jurisdiction in this state, of any person or corporation, the full consideration or sum paid by him for any goods, wares, merchandise and articles included in or advanced or controlled in price by said combination, or the full amount of money so borrowed. (Id., Sec. 4; G. S., Sec. 5188.)

5. That when an action at law or suit in equity shall be commenced in any court of this state, it shall be lawful in the defense thereof to plead in bar or in abatement that the plaintiff or any other person interested in the prosecution of the case is a member or agent of an unlawful combination as described in section one or two of this act, or that the cause of action grows out of such combination, or out of some business or transaction thereof. (Id., Sec. 5; G. S., Sec. 5189.)

6. That the purchase, sale or manufacture of any goods, wares, merchandise or other commodities in this state by any person or corporation who has entered into any such arrangements, contracts, agreements, trusts or combinations in any other state or territory, as described in sections one or two of this act, or the purchase, sale or manufacture of any such articles by any agent or attorney for such person, or as an agent, officer or stock broker of any such corporation, as a trustee, committee, or in any

capacity whatever, shall constitute a violation of this act, and shall subject the offender to the aforesaid liabilities and penalties. (Id., Sec. 6; G. S., Sec. 5190.)

7. It shall be the duty of the county attorneys to diligently prosecute any and all persons violating any of the provisions of this act in their respective counties. If any county attorney shall fail, neglect or refuse to faithfully perform any duty imposed upon him by this act, he shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not less than one hundred dollars nor more than five hundred dollars, and be imprisoned in the county jail not less than ten days nor more than ninety days; and such conviction shall operate as a forfeiture of his office, and the court before whom such conviction may be had shall order and adjudge such forfeiture of office, in addition to the fine imposed as herein provided. And whenever the county attorney shall be unable or shall neglect or refuse to enforce the provisions of this act in his county, or for any reason whatever the provisions of this act shall not be enforced in any county, it shall be the duty of the attorney-general to enforce the same in such county, and for that purpose he may appoint as many assistants as he shall see fit, and he and his assistants shall be authorized to sign, verify and file all such complaints, informations, petitions and papers as the county attorney is authorized to sign, verify or file, and to do and perform any act that the county attorney might lawfully do or perform; and for such services he or his assistants shall receive the same fees that the county attorney would be entitled to for like services, to be taxed and collected in the same manner. (Id., Sec. 7; G. S., Sec. 5191.)

8. It shall be the duty of all sheriffs, deputy sheriffs, constables, mayors, marshals, police judges and police officers of any city or town, having notice or knowledge of any violation of the provisions of this act, to notify the county attorney of the fact of such violation, and to furnish him the names of any witnesses within his knowledge by whom such violation can be proven. If any such officer shall fail to comply with the provisions of this section, he shall upon conviction be fined in any sum not less than one hundred dollars nor more than five hundred dollars; and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had shall, in addition to the imposition

If the fine aforesaid, order and adjudge the forfeiture of his said office. (Id., Sec. 8; G. S., Sec. 5192.)

9. It shall be the duty of the district courts to instruct the grand juries especially as to the provisions of this act. (G. S., Sec. 5193.)

ACT OF 1897.\*

1. A trust is a combination of capital, skill, or acts, by two or more persons, firms, corporations, or associations of persons, or either two or more of them, for either, any or all of the following purposes:

First. To create or carry out restrictions in trade or commerce, or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state.

Second. To increase or reduce the price of merchandise, produce or commodities, or to control the cost or rates of insurance.

Third. To prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

Fourth. To fix any standard or figure, whereby its price to the public shall be, in any manner, controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state.

Fifth. To make or enter into, or execute or carry out, any contract, obligation or agreement of any kind or description by which they shall bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure; or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of

---

\* This act supersedes chapter 158 of the Laws of 1891, which is no longer in force. *State v. Wilson*, 84 Pac., 737. This act is constitutional. *Smiley v. Kansas*, 196 U. S., 447.



any such article or commodity; or by which they shall agree to pool, combine or unite any interest they may have in connection with the manufacture, sale or transportation of any such article or commodity, that its price may in any manner be affected.

And any such combinations are hereby declared to be against public policy, unlawful and void. (L. 1897, c. 265, Sec. 1; G. S., Sec. 5142.)

2. All persons, companies or corporations within this state are hereby denied the right to form or to be in any manner interested, either directly or indirectly, as principal, agent, representative, consignee or otherwise, in any trust as defined in section one of this act. (Id., Sec. 2; G. S., Sec. 5143.)

3. Any corporation holding a charter under the laws of the state of Kansas which shall violate any of the provisions of this act shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine; any any stockholder, director, officer, agent, representative or consignee of any such corporations shall be subject to the penalties herein prescribed. (Id., Sec. 3; G. S., Sec. 5144.)

4. For a violation of any of the provisions of this act by any corporation or any of its officers or agents mentioned herein, it shall be the duty of the attorney-general of the state, or county attorney of any county in which said violation may occur, or either of them, upon his own motion, to institute an action in any court in this state having jurisdiction thereof for the forfeiture of the charter, rights and franchise of such corporation, and the dissolution of its corporate existence. (Id., Sec. 4; G. S., Sec. 5145.)

5. Every person, company or corporation within or without this state, their officers, agents, representatives or consignees, violating any of the provisions of this act within this state, are hereby denied the right and are hereby prohibited from doing any business within this state, and all persons, companies and corporations, their officers, agents, representatives and consignees within this state, are hereby denied the right to handle the goods of or in any manner deal with, directly or indirectly, any such person, company or corporation, their officers, agents, representatives, or consignees, and it shall be the duty of the attorney-general and the county attorney of any county in the state where any violation of this act

be committed, or either of them, to enforce the provisions of this section by injunction or other proceeding; and all persons, companies and corporations, their officers, agents, representatives or consignees, violating any of the provisions of this section, either directly or indirectly, or of abetting or aiding either directly or indirectly in any violation of any provisions of this section, shall be deemed guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than one thousand dollars, and confined in jail not less than thirty days nor more than six months, and shall forfeit not less than one hundred dollars for each and every day such violation may continue, which may be recovered in the name of the state of Kansas in any court of competent jurisdiction. (Id., Sec. 5; G. S., Sec. 5146.)

6. Each and every person, company or corporation, their officers, agents, representatives or consignees, who either directly or indirectly violate any of the provisions of this act shall be deemed guilty of a misdemeanor, and on conviction thereof shall be subject to a fine of not less than one hundred dollars nor more than one thousand dollars, and shall be imprisoned not less than thirty days nor more than six months, and in addition thereto, for each and every day thereafter that such violation shall be committed or continued, forfeit and pay the sum of one hundred dollars, which may be recovered in the name of the state of Kansas in any county where the offense is committed or where either of the offenders reside; and it shall be the duty of the attorney-general of the state, or the county attorney of any county in the state, in which said violation shall occur, or either of them, to prosecute and enforce the provisions of this act. (Id., Sec. 6; G. S., Sec. 5147.)

7. Any contract or agreement in violation of any of the provisions of this act shall be absolutely void and not enforceable in any of the courts of this state; and when any civil action shall be commenced in any court of this state it shall be lawful to plead in the defense thereof that the plaintiff or any other person interested in the prosecution of the case is at the time or has within one year next preceding the date of the commencement of any such action been guilty, either as principal, agent, representative, or consignee, directly or indirectly, of a violation of any of the provisions of this act, or that the cause

of action grows out of any business transaction in violation of this act. (Id., Sec. 7; G. S., Sec. 5148.)

8. That any person, firm, company or corporation that may be damaged by any such agreement, trusts or combinations described in sections one and two of this act, may sue for and recover in any court of competent jurisdiction in this state, of any person, company or corporation operating such trust or combination, such damages as they have sustained, together with a reasonable attorney-fee. (Id., Sec. 8; G. S., Sec. 5149.)

9. It shall be the duty of the attorney-general of the state and the county attorneys in their respective counties to diligently prosecute any and all persons violating any of the provisions of this act; and it shall be the duty of all state and county officials having notice and knowledge of any violation of the provisions of this act to notify the county attorney of their respective counties and the attorney-general of the state of the fact of such violation, and to furnish them with the names of any witnesses by whom such violations can be proved. If any such officer or officers shall fail to comply with the provisions of this section he shall upon conviction be fined in any sum not less than one hundred dollars nor more than one thousand dollars, and such conviction shall be a forfeiture of the office held by such person, and the court before whom such conviction is had shall, in addition to the imposition of the fine aforesaid, order and adjudge the forfeiture of his said office. (Id., Sec. 9; G. S., Sec. 5150.)

10. The several district courts of this state and the judges thereof shall have jurisdiction, and it shall be their duty, upon good cause shown and upon written application of the county attorney or the attorney-general, to cause to be issued by the clerk of said court subpoenas for such witnesses as may be named in the application of a county attorney or the attorney-general, and to cause the same to be served by the sheriff of the county where such subpoena is issued; and such witnesses shall be compelled to appear before such court or judge at the time and place set forth in the subpoena, and shall be compelled to testify as to any knowledge they may have of the violations of any of the provisions of this act; and any witness who fails or refuses to attend and testify shall be punished as for contempt, as provided by law.

Any person subpoenaed and examined shall not be liable to criminal prosecution for any violation of this act about which he may testify. Neither shall the evidence of any such witness be used against him in any criminal proceeding. The evidence of all witnesses so subpoenaed shall be taken down by the reporter of said court, and shall be transcribed and placed in the hands of the county attorney or the attorney-general, and he shall, in the proper courts, at once prosecute such violator or violators of this act as the testimony so taken shall disclose. Witnesses subpoenaed as provided for in this section shall be compelled to attend from any county in the state. (Id., Sec. 10; G. S., Sec. 5151.)

11. Nothing in this chapter shall be held or construed to affect any actions or prosecution which is now pending under the provisions of any law now in existence in this state. (Id., Sec. 11; G. S., Sec. 5152.)

#### ACT OF 1899.

1. If any person, company or corporation doing business in Kansas shall make any agreement, expressed or implied, or by any understanding or combination with any person, company or corporation within or without the state, by which any shipper of seeds, grains, hay or live stock is defrauded out of any portion of the net weight of any consignment or grain, seeds, hay, or live stock, all such agreements or combinations are hereby declared to be in restraint of trade, and any such person, company or corporation shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in the sum of not less than one hundred dollars and not exceeding one thousand dollars for each offense. (L. 1899, c. 293, Sec. 1; G. S., Sec. 5177.)

2. Every person, servant, agent or employe of any firm or corporation doing business within the state of Kansas that shall conspire or combine with any other persons, firm or corporation within or without the state for the purpose of monopolizing any line of business or shall conspire or combine for the purpose of preventing the producer of grain, seeds or live stock or hay, or the local buyer thereof, from shipping or marketing the same without the agency of any third person, firm or corporation, shall be deemed guilty of a misdemeanor, and on conviction shall be fined in a sum not less than one thou-

sand dollars and not to exceed five thousand dollars for each offense. (Id., Sec. 2; G. S., Sec. 5178.)

3. Any person who shall as agent or employe of any person, firm or corporation, enter into an agreement, expressed or implied, by which it is stipulated that grain, seeds or hay shall not be shipped by the producer or local buyer unless accompanied with warehouse receipts, or that the same shall in any manner be under the control of any warehouseman or agent as a condition precedent to the marketing of said grain, all such agreements shall be deemed and are hereby declared unlawful and in restraint of trade, and the person entering into such agreement or combination shall be deemed guilty of a misdemeanor, and upon conviction shall be fined in a sum not less than one thousand dollars and not more than five thousand dollars, or by imprisonment in the county jail not less than ninety days and not to exceed one year, or by both such fine and imprisonment, at the discretion of the court. (Id., Sec. 3; G. S., Sec. 5179.)

4. The several district courts and the supreme court of the state of Kansas are hereby vested with jurisdiction to prevent and restrain violators of this act, and it shall be duty of the attorney-general to enforce the provisions of this act, and such proceedings may be instituted by petition, setting forth the cause of complaint, praying relief, verifying said petition by affidavit, and the court shall grant temporary restraining orders enjoining or prohibiting such violation till the final hearing of the case. Said restraining order shall be granted without bond. (Id., Sec. 4; G. S., Sec. 5180.)

5. Any person, firm or corporation that shall be injured in business or property by any other person, firm or corporation by reason of anything declared unlawful or in restraint of trade by this act, shall have a right of action against the person, firm or corporation violating the provisions of this act for threefold damages, including costs and reasonable attorneys' fees. (Id., Sec. 5; G. S., Sec. 5181.)

#### ACT OF 1905.

1. Any person, firm, or corporation, foreign or domestic, doing business in the state of Kansas, and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying competition, discriminate between different sections, communities or cities of this

state, by selling such commodity at a lower rate in one section, community or city or any portion thereof than is charged for such commodity in another section, community, or city, after equalizing the distance from the point of production, manufacture or distribution and freight rates therefrom, shall be deemed guilty of unfair discrimination. (L. 1905, c. 2, Sec. 1; G. S., Sec. 5162.)

2. If complaint shall be made to the charter board of the state of Kansas that any corporation chartered in this state or authorized to do business therein is guilty of unfair discrimination within the terms of this act, it shall be the duty of the charter board to institute an inquiry as to such discrimination, giving to the party complained against notice and reasonable opportunity to be heard, and if in the judgment of such charter board, or a majority thereof, any corporation, foreign or domestic, shall have been guilty of unfair discrimination, within the terms of this act, the said charter board shall so find, and make a record of such fact upon the records of the charter board, and shall immediately forfeit the charter of such corporation, if it be a domestic corporation, or, if it be a foreign corporation, shall immediately forfeit the permit of such foreign corporation to do business in this state. (Id., Sec. 2; G. S., Sec. 5163.)

3. If after the revocation of such charter, in the case of a domestic corporation, or of its permit, if it be a foreign corporation, any corporation shall continue or attempt to do business in the state of Kansas, it shall be the duty of the attorney-general, by a proper suit in the name of the state of Kansas, to oust such corporation from all business of every kind and character in said state of Kansas. (Id., Sec. 3; G. S., Sec. 5164.)

4. Any person, firm or corporation violating the provisions of this act, upon conviction thereof shall forfeit to the state of Kansas the sum of not less than two hundred dollars for each and every violation of this act; said sum to be recovered by a suit in the name of the state of Kansas in any court of competent jurisdiction, by the attorney-general. All sums collected under this act shall be credited to the permanent school fund of the state of Kansas. (Id., Sec. 4; G. S., Sec. 5165.)

5. Nothing in this act shall be construed as repealing any other act or part of an act, but the remedies herein provided shall be cumulative to all other remedies provided by law. (Id., Sec. 5; G. S., Sec. 5166.)

## ACT OF 1907.

1. That in all civil actions brought in the supreme court or in the district courts of this state for the purpose of enforcing the provisions of chapter 113a of the General Statutes of 1901, being an act entitled "An act defining and prohibiting trusts, providing procedure to enforce the provisions of this act, and providing penalties for violations of the provisions of this act"; or article 13 of chapter 21 of said General Statutes of 1901, the same being composed of acts entitled as follows: "An act to prohibit grain dealers, partnerships, companies, corporations or associations from combining or entering into any agreement or contract to pool or fix the price to be paid for grain, hogs, cattle, or stock of any kind whatever, and to provide punishment for violations of the same," "An act to declare unlawful trusts and combinations in restraint of trade and products, and to provide penalties therefor," "An act prohibiting combinations to prevent competition among persons engaged in buying or selling live stock, and to provide penalties therefor," "An act to prohibit combinations in restraint of trade, declaring such combinations unlawful, and prescribing penalties for the violation of this act," whether such suits are for the purpose of ousting corporations, firms or associations from transacting business in the state through or in pursuance of unlawful agreements and combinations in restraint of trade or to enjoin such unlawful combinations and agreements, the said court may on motion of either party require the opposing litigant to produce books or writings in his possession or under his power which may contain evidence pertinent to the issue, and may require the party to answer interrogatories filed in court with said motion for the discovery of facts material to the support or defense of the action; and if either of said parties fail to comply with such order of the court or judge, the court may, on motion, give judgment by default. (L. 1907, c. 259, Sec. 1; G. S., 5153.)

2. That the opposing party to whom the interrogatories are propounded shall answer the said interrogatories explicitly, fully, and without evasion, and such answers shall be under oath; provided, that no answers to such interrogatories shall be used in any criminal prosecution against the party so answering, nor shall the person answering or producing such books or papers be

liable to criminal prosecution for any offense about which his answers or books and papers produced would be evidential. (Id., Sec. 2; G. S., Sec. 5154.)

3. That the motion of the party asking for the production of such books or papers, or filing such interrogatories, shall be supported by the affidavit of the interrogator or of his attorney that he has reason to believe that the party making the application will derive some material benefit in the action from the answers which he seeks if the answers are fairly made; that it is not sought for the purpose of harassment, vexation, or delay; and that he has reason to believe and does believe that the party who is asked to produce such books or writings or to whom said interrogatories are addressed has knowledge of the facts sought to be discovered, and that the discovery of said facts is not as open to the party making the motion or filing said interrogatories as they are to the party addressed or interrogated. (Id., Sec. 3; G. S., Sec. 5155.)

4. That the court or judge may grant the motion upon notice and it shall be sufficiently granted or allowed if the court or judge will indorse the motion itself with an entry substantially as follows: "Allowed this ----- day of ----- 19-- ----- A. B., Judge." (Id., Sec. 4; G. S., Sec. 5156.)

5. That upon the granting or allowance of said motion, notice thereof shall be given to the party addressed or sought to be interrogated, and his acknowledgment of said notice will be sufficient if signed by himself or by his attorney of record. (Id., Sec. 5; G. S., Sec. 5157.)

6. That if the party required to produce the books and papers as provided by this act shall fail to produce them at the trial, without sufficient cause, the court may on motion made give judgment against him by default. (Id., Sec. 6; G. S., Sec. 5158.)

#### ACT OF 1909.

AN ACT Relating to unlawful monopolies, trusts and combinations in restraint of trade, providing additional penalties for the violation of chapter 265 of the Laws of 1897, and providing for the better enforcement thereof.

In addition to all other penalties and forfeitures now provided by law, each and every firm, person, corporation or association of persons who shall in any manner violate



any of the provisions of chapter 265 of the Laws of 1897, which act relates to unlawful monopolies, trusts, conspiracies and combinations in restraint of trade, shall for each and every day that such violations shall be committed or continued forfeit and pay the sum of one hundred dollars, which may be recovered in the name of the state of Kansas in any county where the offense is committed, or where any or either of the offenders reside, and it shall be the duty of the attorney-general to prosecute for the recovery of said penalties. It shall not be necessary to convict any firm, person, corporation or association of persons before commencing suit to recover the penalties provided for in this section, but said penalties shall apply to any such firm, person, corporation or association whether they or any of them shall be prosecuted criminally or not; provided, said penalty shall not accrue during the pendency of any actions under this act. (L. 1909, c. 261, Sec. 1; G. S., Sec. 5159.)

Actions to recover said penalties may be joined with actions in quo warranto, injunctions or actions of any other nature brought for the purpose of ousting firms, corporations or associations from transacting business in this state because of the violations of any provision of chapter 265 of the Laws of 1897, and any court in which said action shall be brought shall have authority in such quo warranto, injunction or other suit, in addition to the judgments now provided for by law, to render judgment for said penalties as herein provided. (Id., Sec. 2; G. S., Sec. 5160.)

The rights and remedies given by this act shall be construed as cumulative of all other laws in force in this state, and shall not affect, change or repeal any other remedies or rights now existing in this state for the enforcement, payment or collection of fines, penalties and forfeitures. (Id., Sec. 3; G. S., Sec. 5161.)

#### COURT DECISIONS.

The State of Kansas *v.* Wm. C. Phipps et al., 50 Kans., 609, 18 L. R. A., 657.

Barton *v.* Mulvane, 59 Kan., 313, 52 Pac., 883.

Crystal Ice Co. *v.* Wylie, 65 Kan., 104, 68 Pac., 1086.

State *v.* Smiley, 65 Kan., 240, 67 L. R. A., 903, 69 Pac., 199. Aff'd in 196 U. S., 447.

State *v.* Dreany, 65 Kan., 292, 69 Pac., 182.

Greer *v.* Payne, 4 Kan. App., 153, 46 Pac., 190.

Re Pinkney, 47 Kan., 89, 27 Pac., 179.



## KENTUCKY.

### CONSTITUTION.

SEC. 198. It shall be the duty of the general assembly from time to time, as necessity may require, to enact such laws as may be necessary to prevent all trusts, pools, combinations or other organizations from combining to depreciate below its real value any article, or to enhance the cost of any article above its real value.

### STATUTES. (ACT 1890.)

That if any corporation organized under the laws of Kentucky, or under the laws of any other state or country, for transacting or conducting any kind of business in this state, or any partnership, company, firm or individual, or other association of persons, shall create, establish, organize or enter into, or become a member of, or a party to, or in any way interested in, any pool, trust, combine, agreement, confederation or understanding with any other corporation, partnership, individual or person, or association of persons, for the purpose of regulating or controlling or fixing the price of any merchandise, manufactured articles or property of any kind, or shall enter into, become a member of, or party to, or in any way interested in, any pool, agreement, contract, understanding, combination or confederation, having for its object the fixing, or in any way limiting the amount or quantity of any article of property, commodity or merchandise to be produced or manufactured, mined, bought or sold, shall be deemed guilty of the crime of conspiracy, and punished therefor as provided in the subsequent sections of this act. (Sec. 3915.)

It shall not be lawful for any corporation to issue or to own, have or sell any trust certificates or stocks, or for any corporation's agent, officer or employee, agent or director, or any corporation to enter into, either verbally or in writing, any combinations, contract, agreement or

understanding with any person or persons, corporation or corporations, or with any director, agent or officer thereof, the purpose or effect of which combination, contract, agreement or understanding would be to place the management, control or any part of the business of such combination or association, or the manufactured product thereof, in the hands or under the control, in whole or in part, of any trustee or trustees, or agents, or any person whatever, with the intent, or to have the effect to limit, fix, establish or change the price of the production or sale of any article of property or of commerce, or to prevent, restrict, or in any way diminish the manufacture or output of any such article or property. (Sec. 3916.)

If any corporation, company, firm, partnership or person, or association of persons, shall, by court of competent jurisdiction, be found guilty of any violation of any of the provisions of this act, such guilty party shall be punished by a fine of not less than five hundred dollars, and not more than five thousand dollars. Any president, manager, director or other officer or agent, or receiver of any corporation, company, firm, partnership or any corporation, company, firm or association, or member of any corporation, firm or association, or any member of any company, firm or other association, or any individual, found, by a court of competent jurisdiction, guilty of any violation of this act, shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or may be imprisoned in the county jail not less than six months nor more than twelve months, or may be both so fined and imprisoned in the discretion of the court or jury trying the case. (Sec. 3917.)

Any contract or agreement or understanding in violation of the provisions of the preceding sections of this act shall be null and void; and any purchasers of property or article, or of any commodity, from any individual, firm, company or corporation transacting business contrary to the preceding sections of this act, shall not be liable for the price of payment of such article or commodity or property, and may plead and rely on this act as a complete defense to any suit for such price of payment. (Sec. 3918.)

If any corporation created or organized by or under the laws of this state shall be indicted and convicted for any violation of any of the provisions of this act, such

indictment, trial and conviction in any court of competent jurisdiction shall have the effect to forfeit the charter of such corporation without any further proceedings on the subject of the forfeiture of its charter; but any corporation whose charter is so forfeited shall have the right of appeal as is provided in other cases, and the filing of the bond as is required by law shall suspend the judgment of forfeiture until same is passed upon by the court to which the case is appealed. (Sec. 3919.)

It shall be the duty of the circuit judges, and other judges of similar jurisdiction in this state, to give the provisions of this act in charge to the grand juries at each term of their courts. (Sec. 3920.)

The provisions of the Code of Practise regulating appeals in other cases shall apply to appeals under this act. (Sec. 3921.)

[Chapter 117. Laws of Kentucky, 1906.] <sup>1</sup>

AN ACT Permitting persons to combine or pool their crops of wheat, tobacco and other products and sell same as a whole, and making contracts in pursuance thereof valid.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. It is hereby declared lawful for any number of persons to combine, unite or pool, any or all of the crops of wheat, tobacco, corn, oats, hay, or other farm products raised by them, for the purpose of classifying, grading, storing, holding, selling or disposing of same, either in parcels or as a whole, in order or for the purpose of obtaining a greater or higher price therefor than they might or could obtain or receive by selling said crops separately or individually.

SEC. 2. That contracts or agreements made or entered into by persons with each other, the object or intent of which is to unite, pool or combine all or any of the crops of tobacco, wheat, corn, oats, hay, or other farm products, raised by such persons, for the purpose of classifying, grading, storing, holding, selling or disposing of said crops, or any of them, either in parts or as a whole, in order, or for the purpose of obtaining a better or higher price therefor than could or might be obtained by selling said crops separately or individually, are hereby permitted, and shall not, because of any such combina-

<sup>1</sup> Now questioned under the 14th amendment in case of *Collins v. Kentucky*, pending before Supreme Court of United States.

tion or purpose of said persons, be declared illegal or invalid.

SEC. 3. Such persons so entering into such agreement or contract as is set out in the foregoing sections, are hereby permitted to select an agent or agents through or by or with whom said parties so entering into such agreements may classify, grade, store, hold, sell or dispose of said crops, or any of them, and said agent or agents shall have the right to take, receive, hold, store, classify, grade, sell or dispose of said crops so placed in such agreement, as directed or authorized by their principal, for the purpose of accomplishing the object of such combination or agreement between such principals, and contracts and agreements entered into by such agent or agents for the purpose of classifying, grading, storing, holding, selling or disposing of said crops so combined, united or pooled, either in parcels or as a whole, are hereby permitted, and shall not, because of any such combination or purpose of such original agreement of such principals so entering into said combination, or of such agent or agents, be declared illegal or invalid.

SEC. 4. Whereas, many persons of this Commonwealth now desire to combine their respective crops of tobacco, wheat, corn, oats, hay and other farm products, an emergency is now declared to exist which requires that this act should, and it shall, take effect from and after its passage and approval by the Governor. (Approved Mar. 21, 1906.)

[Chapter 8. Laws of Kentucky, 1908.]<sup>1</sup>

AN ACT To amend section 3 of an act of the General Assembly of Commonwealth of Kentucky, approved March 21, 1906, entitled "An act permitting persons to combine or pool their crops of wheat, tobacco and other products and sell same as a whole and making contracts in pursuance thereof valid, being Chapter 117 of the Acts of the General Assembly of the Commonwealth of Kentucky for the year 1906."

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

SECTION 1. That section 3 of an act entitled, An act permitting persons to combine or pool their crops of wheat, tobacco and other products and sell same as a whole, and making contracts in pursuance thereof valid, approved March 21, 1906, being Chapter 117 of the acts of the General Assembly of the Commonwealth of Ken-

<sup>1</sup> Now questioned under the 14th amendment in case of *Collins v. Kentucky*, pending before Supreme Court of United States.

tucky for the year 1906, be and the same is hereby amended and re-enacted so as to read as follows:

Such persons so entering into such an agreement or contract as is set out in the foregoing sections are hereby permitted to select an agent or agents through or by or with whom said parties so entering into such agreement may classify, grade, store, hold, sell, or dispose of said crop, or any of them, and said agent or agents shall have the right to take, receive, hold, store, classify, grade, sell or dispose of said crop so placed in said agreement, for the purpose of accomplishing the object of such combination or agreement between such principals, and contracts and agreements entered into by such agent or agents for the purpose of classifying, grading, storing, holding, selling or disposing of said crop so combined, united or pooled, either in parcel or as a whole, are hereby permitted, and shall not, because of any such combination or purpose of such original agreement of such principals so entering into said combination, or of such agent or agents, be declared illegal or invalid. All contracts heretofore made by any person or persons for the purposes set out in the foregoing sections are hereby declared valid, if otherwise legally binding on the parties. To prevent any breach or violation of any contract made for the purposes set out in the foregoing sections a restraining order and writ of injunction may be issued by proper officer, as prescribed in the Civil Code of Practice.

For any breach or violation of any contract entered into for the purposes set out in the foregoing sections, the injured party may recover the damages sustained by him by reason of such violation of such contract of the person violating the same, and also of any person who shall induce or persuade another to violate such contract, which damages shall include the reasonable expense and attorney's fees incurred by the injured party in prosecuting an action to recover such damages, or to prevent a violation of such contract, if the party complaining shall succeed in doing so, which may be recovered in the same action or original proceeding. Said agent when so selected as herein provided shall have the sole right to sell said crop so pooled or combined, and it shall be unlawful for any owner of such crop to sell or dispose of same and for any person to knowingly purchase the same without the written consent of such agent, and upon conviction thereof he

or they shall be fined in any sum or amount not exceeding \$250.00 for each offense, to be fixed by the jury in their discretion.

SEC. 2. WHEREAS, many crops of tobacco and other products have been combined and pooled in this State, under contract and agreement entered into for the purposes set out in the above section, an emergency is now declared to exist, which requires that this act should and it shall take effect from and after its passage and approval by the Governor. (Approved Mar. 13, 1908.)

#### COURT DECISIONS.

Brewster *v.* Miller et al., 101 Ky., 368; 38 L. R. A., 505.

Anderson *v.* Jett, etc., 89 Ky., 375.

Commonwealth *v.* Grinstead, 108 Ky., 59.

Commonwealth *v.* International Harvester Company, 131 Ky., 551.

Commonwealth *v.* International Harvester Company, 131 Ky., 571.

Commonwealth *v.* International Harvester Company, 147 Ky., 564.

Owen County Board of Control *v.* Brumback, 128 Ky., 137.

Commonwealth *v.* Hodges, 137 Ky., 233.

International Harvester Company *v.* Commonwealth, 137 Ky., 551.

International Harvester Company *v.* Commonwealth, 144 Ky., 403.



## LOUISIANA.

### STATUTES.

Act 86, 1890: "That every contract, combination in the form of trust, or conspiracy, in restraint of trade or commerce or to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state is hereby declared illegal.

"SEC. 2. That every person who shall make any such contract, or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both of said punishments, in the discretion of the court.

"SEC. 3. That every person who shall monopolize, or attempt to monopolize or combine, or conspire with any other person or persons, to monopolize any part of the trade or commerce within the limits of this state, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

Act 90 of 1892: "That after the passage of this act it shall be unlawful for any individual, firm, company, corporation or association to enter into, continue or maintain any combination, agreement or arrangement of any kind, expressed or implied, with any other individual, firm, company, association or corporation, for any of the following purposes: First, to create or carry out restrictions of trade; second, to limit or reduce the production, or increase or reduce the price of merchandise, produce or commodities; third, to prevent competition in manufacture, making, transportation, sale or purchase of merchandise, produce or commodities; fourth, to fix at any

standard or figure, whereby its price shall be in any manner controlled or established, any article of merchandise, produce, commodity or commerce intended for consumption in this state; fifth, to make or enter into or execute or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any article or commodity or article of trade, use, merchandise, commerce or consumption below a common standard figure, or by which they shall agree in any manner to keep the price of such article at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves, or others, in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine, or unite any interest they may have in connection with the sale or transportation of any such article or commodity that its price might in any manner be affected.

“SEC. 2. That any corporation holding a charter under the laws of the state of Louisiana which shall be convicted of a violation of the provisions of this act shall thereby forfeit its rights and franchises, and its corporate existence shall cease and determine, and it shall be the duty of the attorney-general of his own motion and without leave or orders of any court or judge to institute an action in the name of the state of Louisiana for the forfeiture of such rights and franchises and the dissolution of such corporate existence.

“SEC. 3. That every foreign corporation, or any corporation organized under or pursuant to the laws of any state, who shall be convicted of a violation of the provisions of this act is hereby denied the right and prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proceedings in the name of the state of Louisiana.

“SEC. 4. That any violation of either or all the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may be or who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall, as principal, manager, director or agent,

knowingly carry out any of the stipulations, purposes, prices, rates or orders thereunder or in pursuance thereof, shall be punished by fine not less than one hundred dollars nor more than one thousand dollars, and by imprisonment in the penitentiary not less than six months nor more than one year, or by either such fine and imprisonment, in the discretion of the court. It shall be the duty of the district attorneys in their respective jurisdictions and the attorney-general to enforce this provision, and any district attorney of any parish securing a conviction under this provision shall be entitled to such fee or salary as by the law he is allowed for such prosecution.

“SEC. 5. That in any indictment for an offense named in this act it is sufficient to state the purposes or effects of the trust or combination, and that the accused was a member of, acted with or in pursuance of it, without giving its name or description, or how, when or where it was created; provided, that no contract or agreement or arrangement which does not include, or which cannot be held to include, a stipulation between the parties to share in the profits of any such contract, agreement or arrangement, or which contract, agreement or arrangement does not provide for or does not contemplate a profit or pool to be divided between the parties to such contract, agreement or arrangement, shall be held or construed to be in violation of the provisions of this act.

“SEC. 6. That in prosecutions under this act, it shall not be necessary to prove who constitute all the members belonging to the trust or combination.

“SEC. 7. That any contract or agreement in violation of the provisions of this act shall be absolutely void.

“SEC. 8. That the provisions of this act shall not apply to agricultural products or live stock while in the hands of the producer or raiser; nor be so construed as to effect any combination or confederation of laborers for the purpose of procuring an increase of their wages or redress of grievances.”

ACT 1908.

Any person, firm, company, association or corporation, foreign or domestic, doing business in the state of Louisiana, and engaged in the production, manufacture, or distribution of any commodity in general use, that shall,

intentionally, for the purpose of injuring or destroying the business of a competitor in any locality, discriminating between different sections, communities, cities or localities in the state of Louisiana, by selling such commodity at a lower rate in one section, community, city or locality, that is charged for such commodity by said person, firm, company, association or corporation in another section, community, city or locality after making due allowance for the difference, if any, in the grade or quality of such commodity and in the actual cost of transportation of same from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be guilty of unfair discrimination, which is hereby prohibited and declared unlawful, and to be a misdemeanor; and that all sales so made shall be taken and considered as prima facie evidence of unfair discrimination. (L. 1908, Act 128, Sec. 1.)

Any person, firm, company, association or corporation violating any of the provisions of the preceding section, any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual found guilty of a violation thereof shall be fined not less than five hundred dollars (\$500), nor more than five thousand dollars (\$5,000), or be imprisoned in the parish jail for not less than one year, nor more than two years, or both, at the discretion of the court. (L. 1908, Act 128, Sec. 2.)

All contracts or agreements made in violation of any of the provisions of the two preceding sections shall be void. (L. 1908, Act 128, Sec. 3.)

It shall be the duty of the district attorneys, in their several judicial districts, throughout the state, to enforce the provisions of the preceding sections of this act, by appropriate actions and prosecutions in the several courts of the state of competent criminal jurisdiction, and of the attorney general, in all such cases, when carried by appeal or otherwise to the Supreme Court of this state, or to any other court of this state or of the United States; and that it shall also be the duty of the attorney general of the state, whether requested or directed to do so by the governor or by the general assembly of the state or not, to enforce all the foregoing provisions of this act by appropriate actions and proceedings of a civil nature in such court or courts of the state as may have

jurisdiction in such cases, and as is hereinafter provided. (L. 1908, Act 128, Sec. 4.)

If any complaint be made to the secretary of state that any corporation, authorized to do business in this state is guilty of unfair discrimination within the terms of this act, it shall be the duty of the secretary of state to refer the matter to the attorney general, who shall examine into said complaint, and if the facts justify it, in his judgment, shall institute proceedings in the courts against such corporation. (L. 1908, Act 128, Sec. 5.)

If any corporation, foreign or domestic, authorized to do business in this state, or any officer, agent or receiver of any corporation, is found guilty of unfair discrimination, as defined by this act, it shall be the duty of the secretary of state immediately to revoke the permit or license of such corporation to do business in this state. (L. 1908, Act 128, Sec. 6.)

In all cases where a corporation may have been convicted of the violation of the provisions of this act, and it shall continue or attempt to do business thereafter in this state, it shall be the duty of the attorney general of the state, by a proper suit, in the name of the state, to oust such corporation from all business of every kind and character in the state of Louisiana. (L. 1908, Act 128, Sec. 7.)

The remedies and penalties provided in this act shall be cumulative to each other and to all other remedies and penalties provided by law. (L. 1908, Act 128, Sec. 8.)

#### COURT DECISIONS.

Texas and Pacific Ry. et al. *v.* Southern Pacific Ry. Co., 41 La., 970.

John Trisconi *v.* J. M. Winship et al., 43 La., 45.



## MAINE.

### STATUTES.

It shall be unlawful for any firm or incorporated company, or any number of firms or incorporated companies, or any unincorporated company, or association of persons or stockholders, organized for the purpose of manufacturing, producing, refining or mining any article or product which enters into general use and consumption by the people, to form or organize any trust, or to enter into any combination of firms, incorporated or unincorporated companies, or association of stockholders, or to delegate to any one or more board or boards of trustees or directors the power to conduct and direct the business of the whole number of firms, corporations, companies or associations which may have formed, or which may propose to form a trust, combination or association inconsistent with the provisions of this section and contrary to public policy. (R. S., c. 47, Sec. 53.)

No certificate of stock, or other evidence of interest, in any trust, combination or association, as named in the preceding section, shall have legal recognition in any court in this state, and any deed of real estate given by any person, firm or corporation, for the purpose of becoming interested in such trust, combination or association, or any mortgage given by the latter to the seller, as well as all certificates growing out of such transaction, shall be void. (R. S., c. 47, Sec. 54.)

Any incorporated company now operating under the laws of this state, and which at the date of the passage of this act, may be interested in any trust, combination or association, named in section one of this act, or any firm, incorporated or unincorporated company, or association of persons or stockholders, who shall enter into or become interested in such trust, combination or association, after the passage of this act, shall be deemed guilty of a misdemeanor, and be subject to a fine of not less than five nor more than ten thousand dollars: *Pro-*

*vided*, That nothing in this section shall be so construed as to apply to such incorporated companies as shall, within ninety days from the date of the passage of this act, withdraw from and sever all connections with such trust, combination or association. (R. S., c. 47, Sec. 55.)

It shall be the duty of the secretary of state, as soon as may be after the passage of this act, to forward to the president, secretary or treasurer, of each incorporated company organized for the purpose of manufacturing, producing, refining or mining any article or product which enters into general use and consumption by the people, and doing business within this state, a copy of this act, and also a letter of inquiry as to whether said corporation has merged all or any part of its business or interests in or with any trust, combination or association of persons or stockholders as named in section one of this act, and to require an answer, under oath, of the president, secretary, treasurer, or directors of said company, a form of affidavit, together with questions to be answered, shall be prescribed by the secretary of state, and forwarded with said letter, and on neglect or refusal to make answers under oath to such questions for the term of ninety days from the date of this act, the secretary of state shall notify the attorney-general, whose duty it shall be forthwith to file an information in the nature of a writ of quo warranto, with the supreme judicial court, against said corporation, and the court may, upon hearing and proof of such neglect or refusal, decree the dissolution of said corporation, and its corporate rights and powers shall be terminated. (R. S., c. 47, Sec. 56.)



## **MARYLAND.**

### **CONSTITUTION.**

**ART. 41.** That monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered.



## MASSACHUSETTS.

### STATUTES.

1907.

SECTION 1. No person, firm, corporation or association shall insert in or make it a condition or provision of any sale or lease of any tool, implement, appliance or machinery that the purchaser or lessee thereof shall not buy, lease or use machinery, tools, implements or appliances or material or merchandise of any person, firm, corporation or association other than such vendor, or lessor; but this provision shall not impair the right, if any, of the vendor or lessor of any tool, implement, appliance or machinery protected by a lawful patent right vested in such vendor or lessor to require by virtue of such patent right the vendee or lessee to purchase or lease from such vendor or lessor such component and constituent parts of said tool, implement, appliance or machinery as the vendee or lessee may thereafter require during the continuance of such patent right: *Provided*, that nothing in this act shall be construed to prohibit the appointment of agents or sole agents to sell or lease machinery, tools, implements or appliances.

SEC. 2. Any person, firm, corporation or association, or the agent of any such person, firm, corporation or association, that violates the provisions of this act shall be punished for each offence by a fine not exceeding five thousand dollars.

All leases, sales or agreements therefor hereafter made in violation of any of the provisions of this act shall be void as to any and all of the terms or conditions thereof in violation of said provisions. [Approved June 1, 1907.]

1908.

Every contract, agreement, arrangement or combination in violation of the common law in that thereby a monopoly in the manufacture, production or sale in this

commonwealth of any article or commodity in common use is or may be created, established or maintained, or in that thereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or in that thereby, for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restrained or prevented is hereby declared to be against public policy, illegal and void. (L. 1908, c. 454, Sec. 1.)

The attorney-general, or, by his direction, a district attorney, may bring an action in the name of the commonwealth against any person, trustee, director, manager, or other officer or agent of a corporation, or against a corporation to restrain the doing in this commonwealth of any act herein forbidden or declared to be illegal, or any act in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made. The superior court shall have jurisdiction to restrain and enjoin any act herein forbidden or declared to be illegal. (Id., Sec. 2.)

In such action no person shall be excused from answering any questions that may be put to him, or from producing any books, papers, documents, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but no person shall be prosecuted in any criminal action or proceedings, or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, in any such action. (Id., Sec. 3.)

Nothing in section one of this act shall be construed as impairing, repealing, or superseding any statute of this commonwealth. (Id., Sec. 4.)

1911.

Upon written complaint on oath of the complainant, filed in the supreme judicial court or in the superior court, alleging that any person, co-partnership or corporation has, in the county where such complaint is filed, entered into any contract, agreement, arrangement, com-

bination or practice, whereby a monopoly in the manufacture, production, transportation or sale in this commonwealth of any article or commodity in common use is or may be created, established or maintained; or whereby competition in this commonwealth in the supply or price of any such article or commodity is or may be restrained or prevented; or whereby for the purpose of creating, establishing or maintaining a monopoly within this commonwealth of the manufacture, production, transportation or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restrained or prevented; or whereby the price of any article or commodity in common use is or may be unduly enhanced within this commonwealth; the court shall hear on oath the complainant and any witnesses produced by him. If it appears to the court that such contract, agreement, arrangement, combination or practice exists, the court shall issue an order of notice to the respondents to appear and show cause why the court should not appoint a master to hear and to make report on said complaint; and thereafter, if such cause be not shown, the court shall appoint a master who shall, in accordance with the established practice and rules in equity, hear the complainant and the respondents and their evidence upon the allegations of said complaint; and upon motion of the complainant, other persons, co-partnerships or corporations, within the jurisdiction of the court and appearing to the court to be necessary parties to the full examination of the allegations of said complaint, may upon proper notice be cited to appear as parties respondent. After such hearing the master shall make and file his report, and said parties may present their objections and exceptions thereto and prosecute the same in accordance with the rules of procedure in equity. Said final report of the master shall be filed by him within thirty days after the close of the hearing, unless further time is allowed by order of the court. (L. 1911, c. 503, Sec. 1.)

Masters may append to their reports made in accordance with the provisions of the preceding section, such recommendations to the parties as may be germane to, and warranted by their findings of fact or rulings of law, and as may tend to remove restraint or to prevent any ground of complaint alleged in said complaint and found by the master to be proven; but such recommendations

may, upon motion of any party, and upon order of the court, be disaffirmed and expunged from the records of the case. The report of the master, if affirmed by the court, shall be transmitted by the clerk to the attorney-general, who shall forthwith cause such further proceedings, either civil or criminal, to be instituted as such report may warrant. (Id., Sec. 2.)

Masters appointed under the provisions of this act shall have all the powers conferred upon masters in equity procedure. Their fees shall be fixed by the court and paid out of the treasury of the commonwealth. Upon request of a master appointed under the provisions of this act a room or rooms for hearings shall be provided in the state house, if the cause be pending in the county of Suffolk, Middlesex or Norfolk; if elsewhere, in some county court house within the county where the cause is pending. Upon approval by the court, such masters may employ suitable clerical or stenographic assistants to report the evidence taken and the findings. Such assistants shall be paid out of the treasury of the commonwealth. (Id., Sec. 3.)

At any hearing, pursuant to the provisions of this act, no person shall be excused from answering any questions material to the proof of the allegations of the complaint, or from producing any books, papers or documents which are so material, on the ground that the testimony or evidence, documentary or otherwise, so required of him, tends to incriminate him; but no person shall be prosecuted in any criminal proceeding, or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence, documentary or otherwise, in any such hearing. Upon objection of a party, no book, paper or document, or part thereof, produced by him at the request of the other party to the action shall be examined by the party making the request or his attorney, or offered in evidence, unless it is so ordered by the master, after examination thereof and a hearing thereon, and a ruling by the master that such evidence is material and competent. (Id., Sec. 4.)

1912.

Any person, firm, association, or corporation, foreign or domestic, doing business in the commonwealth and en-

gaged in the production, manufacture or distribution of any commodity in general use, that shall maliciously, or for the purpose of destroying the business of a competitor and of creating a monopoly in any locality, discriminate between different sections, communities, towns or cities of this commonwealth or between purchasers by selling such commodity at a lower rate for such purpose in one section, community, town or city than is charged for such commodity by the vendor in another section, community, town or city in the commonwealth, after making due allowance for the difference, if any, in the grade or quality and in the cost of transportation, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful. (L. 1912, c. 651, Sec. 1.)

It shall be unlawful for any person, firm, association or corporation to combine with any other person, firm, association or corporation for the purpose of destroying the trade or business of any person, firm, association or corporation, engaged in selling goods or commodities and of creating a monopoly within this commonwealth, and any such combination is hereby prohibited and declared unlawful. (Id., Sec. 2.)

Any person, firm, association or corporation found guilty of violating any provision of this act, if an individual, shall be punished by a fine of not less than five hundred dollars or more than five thousand dollars, or by imprisonment for not less than one month or more than one year, or by both such fine and imprisonment; and if the offender is a corporation, then by a fine as aforesaid. (Id., Sec. 3.)

Whoever, in his individual capacity, or acting in behalf of any firm, association or corporation, for the purpose of evading any provision of this act, shall appoint agents, secure or hold the control of corporate stock, or by agreement with any other person, firm, association or corporation cause any of the commodities mentioned in section one to be sold for the purpose of such evasion or attempt to evade, shall be punished by imprisonment in the state prison for not less than six months or not more than five years, if an individual; and if any of the acts specified in this section are done by a corporation, then the directors, stockholders or agents authorizing such evasion or discrimination shall each be held guilty thereof, and shall be punished in the manner provided in this section for individuals. (Id., Sec. 4.)

All contracts or agreements made in violation of any provision of this act shall be void. (Id., Sec. 5.)

It shall be the duty of the district attorneys, in their districts, and of the attorney-general, to enforce the provisions of this act by appropriate actions in courts of competent jurisdiction, but nothing herein shall limit the right of any court to issue warrants and make commitments to await the action of the grand jury under this act in the case of crimes under the common law, and such power is hereby given to the courts of the commonwealth. (Id., Sec. 6.)

If complaint shall be made to the secretary of the commonwealth that any person, firm, association or corporation authorized to do business in this commonwealth is guilty of any violation of this act, it shall be the duty of the secretary of the commonwealth to refer the matter to the attorney-general, who shall, if the facts justify it in his judgment, institute proceedings in the courts against such persons, firm, association or corporation. (Id., Sec. 7.)

If any corporation, foreign or domestic, authorized to do business in this commonwealth is found guilty of any violation of this act, such finding shall cause a forfeiture of all the privileges and rights conferred upon the corporation by general or special law of this commonwealth and shall bar its right to do business in this commonwealth. (Id., Sec. 8.)

If any corporation, after having been found guilty of any violation of this act, shall continue or attempt to do business in this commonwealth, it shall be the duty of the attorney-general by a proper action in the name of the commonwealth to oust such corporation from all business of every kind and character in this commonwealth. (Id., Sec. 9.)

Nothing in this act shall be construed as repealing any other act, or part of an act, except such acts or parts of acts, if any there be, as are inconsistent herewith. (Id., Sec. 10.)

[Chap. 709.]

AN ACT To enlarge the powers and duties of the attorney-general.

SECTION 1. It shall be the duty of the attorney-general, and he is hereby authorized, to take cognizance of all violations of law or of orders of courts, tribunals or com-



missions affecting the general welfare of the people, including combinations, agreements and unlawful practices in restraint of trade or for the suppression of competition, or for the undue enhancement of the price of articles or commodities in common use, and to institute or cause to be instituted such criminal or civil proceedings before the appropriate state and federal courts, tribunals and commissions as the attorney-general may deem to be for the interest of the public, and to investigate all matters in which he has reason to believe that there has been such violation. To carry out the purposes of this act he may appoint such assistant or assistants as he may deem necessary to act for him under his direction, and, with the approval of the governor and council, he shall fix their compensation. In all criminal proceedings instituted under this act the attorney-general may require district attorneys to assist him and to act for him in their respective districts, and in all matters so referred to them the district attorneys shall be under the jurisdiction and direction of the attorney-general.

SECTION 2. To carry out the provisions of this act the attorney-general, with the consent of the governor and council, may expend a sum not exceeding five thousand dollars from the treasury of the commonwealth.

SECTION 3. This act shall take effect upon its passage.  
Approved May 28, 1913.

#### COURT DECISIONS.

Gloucester Isinglass and Glue Co. *v.* Russia Cement Co., 154 Mass., 92.

Opinion of the Justices on the law of 1912, 211 Mass., 620.

United Shoe Machinery Co. *v.* La Chapelle, 212 Mass., 467.



## MICHIGAN.

### CONSTITUTION.

No railroad corporation shall consolidate its stock, property, or franchises, with any other railroad corporation owning a parallel or competing line; and in no case shall any consolidation take place except upon public notice given at least sixty days to all stockholders, in such manner as shall be provided by law.

### STATUTES.

#### ANTI-TRUST LAW OF 1899.

SECTION 1. That a trust is a combination of capital, skill or arts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce;

2. To limit or reduce the production, or increase or reduce the price of merchandise or any commodity;

3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity;

4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state;

5. It shall hereafter be unlawful for two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, to make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any

article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers, in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interests that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void.

SEC. 2. For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the attorney-general, or the prosecuting attorney of the proper county, to institute proper suits or quo warranto proceedings in the court of competent jurisdiction in any of the county seats in the state where such corporation or association exists or does business, or may have a domicile. And when such suit is instituted by the attorney-general in quo warranto, he may also begin any such suit in the supreme court of the state, or the circuit court of Ingham, Kent or Wayne counties, for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

SEC. 3. Every foreign corporation, as well as any foreign association, exercising any of the powers, franchises or functions of a corporation in this state, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this state, and it shall be the duty of the attorney-general to enforce this provision by bringing proper proceedings in quo warranto in the supreme court, or the circuit court of the county in which defendant resides or does business, or other proper proceedings by injunction or otherwise. The secretary of state shall be authorized to revoke the certificate of any such corporation or association, heretofore authorized by him to do business in this state.

SEC. 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall, as principal, manager, director, agent, servant or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty dollars nor more than five thousand dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

SEC. 5. In any indictment for any offense named in this act, it is sufficient to state the purpose or effects of the trust or combination, and that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

SEC. 6. In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

SEC. 7. Each and every firm, person, partnership, corporation or association of persons, who shall in any manner violate any of the provisions of this act, shall for each and every day that such violation shall be committed or continued, after due notice given by the attorney-general or any prosecuting attorney, forfeit and pay the sum of fifty dollars, which may be recovered in the name of the state, in any county where the offense is committed, or where either of the offenders reside. And it shall be the duty of the attorney-general, or the prosecuting attorney of any county on the order of the attorney-general, to prosecute for the recovery of the same. When the action

is prosecuted by the attorney-general against a corporation or association of persons, he may begin the action in the circuit court of the county in which defendant resides or does business.

SEC. 8. That any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

SEC. 9. That the provisions hereof shall be held cumulative of each other and all other laws in any way affecting them now in force in this state.

SEC. 10. It shall not be lawful for any person, partnership, association or corporation, or any agent thereof, to issue or to own trust certificates, or for any person, partnership, association or corporation, agent, officer or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article, and any person, partnership, association or corporation that shall enter into any such combination, contract or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars, nor more than one thousand dollars.

SEC. 11. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover twofold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court, before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may

cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending or not.

SEC. 11a. No person shall be excused from attending and testifying, or from producing books, papers, contracts, agreements and documents in any cause, suit or proceeding, civil, criminal or otherwise, based upon or growing out of any alleged violation of any of the provisions of this act, or of any act amendatory or declaratory hereof, or supplemental hereto, in any court of competent jurisdiction, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him, may tend to criminate him or subject him to fine, punishment, penalty or forfeiture. The attendance and testimony of such persons in such cases and the production of such books, papers, contracts, agreement and documents, may be enforced in the same manner as in any other cause, suit or proceeding. But no person shall be prosecuted or subjected to any fine, imprisonment, penalty or forfeiture for or on account of any matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, in any such case, suit or proceeding. No testimony so given by him shall in any prosecution be used as evidence, either directly or indirectly, against him; provided, that immunity shall extend only to a natural person who in obedience to a subpoena gives testimony under oath, or produces evidence, documentary or otherwise, under oath; provided further, that no person so testifying shall be exempt from prosecution and punishment for perjury committed in so testifying. (Added, Public Acts 1911, No. 2.)

SEC. 12. The word "person" or "persons," whenever used in this act, shall be deemed to include corporations, partnerships and associations existing under or authorized by the laws of the state of Michigan, or any other state, or any foreign country.

SEC. 13. All acts or parts of acts contravening the provisions of this act are hereby repealed. (P. A. 1899, No. 255.)

#### ANTI-TRUST LAW OF JUNE 16, 1905.

SECTION 1. That all contracts, understandings, and agreements, made or entered into by and between parties capable of making a valid contract, the purpose or intent of which is to prohibit, restrict, limit, control, or regulate the sale of any article of machinery, tools, imple-

ments, vehicles, or appliances designed to be used in any branch of productive industry, or to enhance or control or regulate the price thereof; or in any manner to restrict, limit, regulate or destroy free and unlimited competition in the sale thereof, shall be deemed illegal and void as in restraint of trade; provided, that nothing in this act shall be construed to impair or invalidate agreements or contracts known to the common law and in equity as those relating to good will of trade.

SEC. 2. Contracts, understandings, and agreements of the following nature, whether written or oral, are hereby declared to be illegal and void under the provisions of section 1 of this act:

First. Contracts compelling and requiring that any particular make or brand of any article of machinery, tools, implements, vehicles, or appliances designed to be used in any branch of productive industry, shall be dealt in or sold, by either party to such contract, to the exclusion of all other makes or brands of such article or articles.

Second. Contracts providing for the exclusive sale of certain makes or brands of manufactured articles of machinery, tools, implements, vehicles, or appliances designed to be used in any branch of productive industry, and stipulating certain sums to be paid as liquidated damages to either party for every article so sold of other than the specified make or brand.

SEC. 3. Any person making or entering into any contract, understanding, or agreement made illegal by the terms of this act, or who shall do any act in pursuance of carrying the same into effect in whole or in part, shall be deemed guilty of a misdemeanor, and shall, upon conviction, be punished by a fine of not less than ten nor more than one hundred dollars, or by imprisonment in the county jail not more than ninety days, or by both such fine and imprisonment at the discretion of the court.

SEC. 4. Any partnership limited, or corporation, organized under the laws of this state, or authorized to carry on business in this state, which shall make, execute or enter into any contract, understanding or agreement made illegal under the terms of this act, or shall do any act in pursuance of carrying the same into effect in whole or in part, shall be deemed to be guilty of a misuser and shall forfeit its charter and all rights thereunder.



SEC. 5. It shall be the duty of the attorney-general to file an information in the nature of quo warranto, upon his own relation, or the relation of any person, on leave granted, against any corporate body whenever it shall violate any of the provisions of this act.

SEC. 6. Any person who shall be injured in his business or property, through the making or operating of any contract, understanding or agreement, made in violation of this act, shall have a right of action against the parties to such contract, understanding or agreement for all damages sustained by him in consequence thereof, and may recover the same in any court of competent jurisdiction. (P. A., 1905, No. 229.)

ANTI-TRUST LAW OF JUNE 20, 1905.

SECTION 1. All agreements and contracts by which any person, copartnership or corporation promises or agrees not to engage in any avocation, employment, pursuit, trade, profession, or business, whether reasonable or unreasonable, partial or general, limited or unlimited, are hereby declared to be against public policy and illegal and void.

SEC. 2. All combinations of persons, copartnerships, or corporations made and entered into for the purpose and with the intent of establishing and maintaining or of attempting to establish and maintain a monopoly of any trade, pursuit, avocation, profession, or business, are hereby declared to be against public policy and illegal and void.

SEC. 3. Any corporation organized under the laws of this State for the purpose of establishing and maintaining, or attempting to establish or maintain, any combination of persons, copartnerships or corporations with intent to establish and maintain or of attempting to establish and maintain a monopoly of any trade, pursuit, avocation, profession, or business, is hereby declared to be against public policy and illegal and void.

SEC. 4. Any foreign corporation organized for the purpose and with the intent of establishing and maintaining or of attempting to establish and maintain a monopoly of any trade, pursuit, avocation, profession, or business, is hereby prohibited from doing business in this state, and any permission or authority heretofore obtained by any such corporation to do business in this state is hereby declared to be illegal and void.

SEC. 5. This act shall apply to agreements, contracts, and combinations in restraint of trade or commerce heretofore entered into or made, and which are sought to be enforced or maintained after this act takes effect; and all contracts and agreements in violation of this act heretofore made, expressly or impliedly, continuing in force after this act takes effect, are hereby declared to be against public policy and illegal and void.

SEC. 6. This act shall not apply to any contract mentioned in this act nor in restraint of trade, where the only object of the restraint imposed by the contract is to protect the vendee or transferee of a trade, pursuit, avocation, profession, or business, or the good will thereof, sold and transferred for a valuable consideration in good faith and without any intent to create, build up, establish, or maintain a monopoly.

SEC. 7. This act is declared to be supplementary to, and declaratory of, and in addition to Act No. 255 of the Public Acts of 1899, p. 409. (P. A., 1905, No. 329.)

[No. 135.]

AN ACT To prevent unfair commercial discrimination between different localities for the purpose of ruining the business of a competitor.

*The People of the State of Michigan enact:*

SECTION 1. Any person, firm, company, association or corporation, foreign or domestic, doing business in the State, and engaged in the production, manufacture or distribution of any petroleum products, that shall intentionally, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities or cities of this State, by selling such commodity at a lower rate in one section, community or city, than is charged for said commodity by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

SEC. 2. Any person, firm, company, association or corporation violating any of the provisions of the preceding section, and any officer, agent or receiver of any firm, company, association or corporation, or any member of

the same, or any individual found guilty of a violation thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars or be imprisoned in the county jail not to exceed one year, or suffer both penalties.

SEC. 3. All contracts or agreements made in violation of any of the provisions of the two preceding sections shall be void.

SEC. 4. It shall be the duty of the county prosecuting attorneys in their counties, and the Attorney General of the State, to enforce the provisions of the preceding sections of this act by appropriate actions in courts of competent jurisdiction.

SEC. 5. If complaint shall be made to the Secretary of State that any corporation authorized to do business in this State is guilty of unfair discrimination within the terms of this act, it shall be the duty of the Secretary of State to refer the matter to the Attorney General who shall, if the facts justify it in his judgment, institute proceedings in the courts against such corporation.

SEC. 6. If any corporation, foreign or domestic, authorized to do business in this State, is found guilty of unfair discrimination within the terms of this act, it shall be the duty of the Secretary of State to immediately revoke the permit of such corporation to do business in this State.

SEC. 7. If after revocation of its permit such corporation, or any other corporation not having a permit and found guilty of having violated any of the provisions of this act, shall continue or attempt to do business in this State, it shall be the duty of the Attorney General, by a proper suit in the name of the State, to oust such corporation from all business of every kind and character in said State.

SEC. 8. Nothing in this act shall be construed as repealing any other act, or part of act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

Approved May 1, 1913.

#### COURT DECISIONS.

David M. Richardson *v.* Christian H. Buhl and Russell A. Alger, 77 Mich., 632.

Daniel Lovejoy and E. W. Lovejoy *v.* Jacob Michels, 88 Mich., 15.

Merz Capsule Co. *v.* United States Capsule Co., 67 Fed., 414.

Detroit Salt Co. *v.* National Salt Co., 10 Det. L. N., 366; 96 N. W., 1.

Bingham *v.* Brands, 119 Mich., 255.

Hitchcock *v.* Anthony, 28 C. C. A., 80; 83 Fed., 779.

Wolverine Fish Co. *v.* Booth, 143 Mich., 89; 106 N. W., 868.

Booth *v.* Davis, 127 Fed., 875.

Hunt *v.* Riverside Co-operative Club, 140 Mich., 538; 104 N. W., 40; Am. St. Rep., 420.

Bigelow *v.* Calumet & Hecla Mining Co., 155 Fed., 869.

Grand Union Tea Co. *v.* Lewitsky, 153 Mich., 244; 116 N. W., 1090.

## MINNESOTA.

### STATUTES.

No person or association of persons shall enter into any pool, trust agreement, combination or understanding whatsoever with any other person or association, corporate or otherwise, in restraint of trade, within this state, or between the people of this or of any other state or country, or which tends in any way or degree to limit, fix, control, maintain or regulate the price of any article of trade, manufacture or use bought and sold within the state, or which limits or tends to limit the production of any such article, or which prevents or limits competition in the purchase and sale thereof, or which tends or is designed so to do. Every person violating any provision of this section, or assisting in such violation, shall be guilty of a felony, and upon conviction thereof shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars, or by imprisonment in the state prison for not less than three nor more than five years. (Sec. 5168.)

Every domestic corporation which shall, directly or indirectly, violate any provision of section 5168, or which shall in any way assist in carrying out any of the purposes of such illegal pool, trust agreement, combination or understanding, in addition to the penalties imposed upon the members thereof by said section, shall forfeit all its corporate franchises; and every foreign corporation admitted to transact business in this state, guilty of like conduct, shall thereafter be prohibited from continuing its business therein. The attorney-general and the several county attorneys shall begin and conduct, in the district court, all actions and proceedings necessary to enforce the provisions of this section, and any citizen may do so. Said court, by injunction or restraining order, may prohibit the transaction of business by such corporation pending the trial of such action. (Sec. 5170.)

See also L. 1907, c. 269.

## COURT DECISIONS.

Cornelius G. Kolff *v.* St. Paul Fuel Exchange et al., 48 Minn., 215.

Bohn Manufacturing Co. *v.* W. G. Hollis et al., 54 Minn., 223.

Ertz *v.* Produce Exchange Co., 82 Minn., 173; 51 L. R. A., 825.

Minnesota *v.* Northern Securities Co., 123 Fed., 692.

Berryhill *v.* St. Paul Gaslight Co., 100 N. W., 216.

Espenson *v.* Koepke, 93 Minn., 278; 101 N. W., 168.

## MISSISSIPPI.

### CONSTITUTION.

SEC. 198. The legislature shall enact laws to prevent all trusts, combinations, contracts, and agreements inimical to the public welfare.

[Adopted, November 1, 1890.]

### STATUTES.

Section 5002 of Mississippi Code of 1906, as amended by L. 1908, c. 119, section 1, provides:

A trust and combine is a combination, contract, understanding, or agreement, expressed or implied, between two or more persons, corporations or firms, or associations of persons, or between one or more of either with one or more of the others:

(a) In restraint of trade;

(b) To limit, increase or reduce the price of a commodity;

(c) To limit, increase or reduce the production or output of a commodity;

(d) Intended to hinder competition in the production, importation, manufacture, transportation, sale or purchase of a commodity;

(e) To engross or forestall a commodity;

(f) To issue, own or hold the certificate of stock of any trust or combine;

(g) To place the control, to any extent, of business or the products and earnings thereof, in the power of trustee, by whatever name called;

(h) By which any other persons than themselves, their proper officers, agents and employees shall, or shall have the power to, dictate or control the management of business; or—

(i) To unite or pool interests in the importation, manufacture, production, transportation, or price of a commodity; and is inimical to the public welfare, unlawful and a criminal conspiracy.

Any corporation organized under the laws of this or any other state, or country, and transacting or conducting any kind of business in this state, or any partnership or individual, or other association of persons whatever, who are now, or shall hereafter create, enter into, or become a member of, or party to, any pool, trust, combine, agreement, combination, confederation or understanding, whether the same is made in this state or elsewhere, with any other corporation, partnership, individual, or with any other person, or association of persons, to regulate or fix in this state the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or tornado, or to maintain said price when so regulated or fixed, or who are now, or shall hereafter enter into, become a member of or party to, any pool, agreement, contract, combination, association or confederation, whether made in this state or elsewhere, to fix or limit in this state the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premiums to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual, or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and subject to the penalties as provided by chapter 145, of the Code of 1906.

Any corporation, domestic or foreign, or individual, partnership or association of persons whatsoever;

(j) Who shall restrain, or attempt to restrain the freedom of trade or production;

(k) Or who shall monopolize or attempt to monopolize the production, control or sale of any commodity, or the prosecution, management or control of any kind, class or description of business;

(l) Or who shall engross or forestall, or attempt to engross or forestall any commodity;

(m) Or who shall destroy or attempt to destroy competition in the manufacture or sale of a commodity, by selling or offering same at a price below the normal cost of production;



(n) Or who shall destroy or attempt to destroy competition in the manufacture or sale of a commodity, by selling or offering the same for sale at a lower price at one place in this state than another, differences of freight and other necessary expenses of sale and delivery considered;

(o) Or who shall destroy or attempt to destroy competition by rendering any service or manipulating, handling or storing any commodity for a less price in one locality than in another, the differences in the necessary expenses of carrying on the business considered.

Shall be deemed and held a trust and combine within the meaning and purpose of this act, and chapter 14 of the code of 1906, and shall be liable to the pains, penalties, fines, forfeitures, judgments and recoveries denounced against trusts and combines in said chapter 145 of the code of 1906, and shall be proceeded against in manner and form therein provided, as in case of other trusts and combines. And it shall be sufficient to make out a prima facie case of a violation of subdivision "n" hereof to show a sale or offer of sale of commodity at a lower price at one place in this state than another, or a violation of subdivision "o" to show a lower charge for the services therein mentioned in one locality than another.

L. 1908, c. 119, Sec. 2, provides:

"No right, liability, pain, penalty, forfeiture, fine or suit, prosecution, or offense committed, under laws existing prior to this amendment, of said section 5002 of the code of 1906, shall be in any wise remitted, released, taken away or affected by such amendment, but the same shall be asserted, prosecuted, declared, inflicted, imposed, proceeded with and adjudged according to the law in force prior to this amendment."

Section 5003 of the Mississippi Code of 1906 provides:

"Every contract or agreement to enter into or pursue any trust and combine, and every contract or agreement made by another with any trust and combine, or with any member of a trust and combine, for any purpose relative to the business of such trust and combine, is void, and cannot be enforced in any court."

Section 5004, of the Mississippi Code of 1906, as amended by L. 1910, c. 222, provides:

Any person, corporation, partnership, firm or association, or any representative or agent thereof, violating

any of the provisions of this chapter shall forfeit not less than twenty dollars nor more than five hundred dollars for every such offense and each day any person, corporation, partnership, firm or association shall continue to do so, shall be a separate offense; and the penalty in such cases can be recovered by the state on the relation of the attorney-general or district attorney; and it shall be the duty of the several circuit judges to specially call the attention of the grand juries to this provision; but no prosecution, pain, penalty, or forfeiture for offenses committed under laws already existing at the time of the adoption of this act, shall be in anywise remitted, released, or taken away by reason hereof or anything contained, but the same shall be proceeded with, adjudged, imposed and inflicted in conformity with laws already existing and in conformity with all the provisions of chapter 145, Code of Mississippi of 1906, which may be constitutionally applicable thereto.

Section 5005 of Mississippi Code of 1906, as amended by L. 1910, c. 223, provides:

No corporation shall directly or indirectly hereafter purchase, or in any manner acquire the capital stock or any part thereof of any other competing corporation doing business in this state, nor directly or indirectly hereafter purchase or in any manner acquire, the franchise, plant or equipments of any other corporation doing business in this state, if such other corporation be engaged in the same kind of business and being a competitor therein. Any corporation offending against this provision shall forfeit its charter, if a domestic corporation, and if a foreign corporation shall forfeit its right to do business in this state, and shall be proceeded against by the attorney general in manner and form provided in section 5004 of this chapter; but no prosecution, pain, penalty, or forfeitures for offenses committed under laws already existing at the time of the adoption of this act, shall in any wise be remitted, released, or taken away, by reason hereof or anything herein contained, but the same shall be proceeded with and in conformity with all the provisions of Chapter 145, Code of Mississippi of 1906, which may be constitutionally applicable thereto.

Section 5006 of the Mississippi Code of 1906 provides:

No corporation, domestic or foreign, shall engage in any business not expressly authorized by its charter, nor fairly and reasonably incidental to the business therein

authorized. Any corporation offending against this provision shall, if a domestic corporation, forfeit its charter, and if a foreign corporation, shall forfeit its right to do business in this state and shall be proceeded against by the attorney-general in manner and form provided in section 5004.

Section 5007 of the Mississippi Code of 1906, as amended by c. 250, L. 1912, provides:

Any person injured or damaged by a trust and combine as herein defined, or its effects direct or indirect, may, in each instance, of such injury or damage, recover the sum of five hundred dollars, and all actual damages; and he may maintain his action therefor against one or more of the parties to the trust and combine, their attorneys, officers and agents, and that whether or not all parties to the trust and combine be known or whether or not the trust and combine were made or shall exist in this state. And in any suit under this section, proof by any party plaintiff that he has been compelled to pay more for any commodity, or to accept less for any commodity, or to pay more for any service rendered by any corporation exercising a public franchise, by reason of the unlawful act or agreement of the defendant trust, its officers, agents or attorneys, than he would have been compelled to give or accept, but for such unlawful act or agreement, shall be prima facie evidence of damage, and in every such case proof of an unlawful purpose or agreement to raise or lower price or cost shall be prima facie evidence that such price or cost was raised or lowered by reason of such purpose or agreement.

Section 5008 of the Mississippi Code of 1906 provides:

If any person, association, firm or corporation shall combine with any other person, association, firm or corporation, or if either of them combine with one or more of the others to prevent, by pooling, any or either of said persons, associations, firms or corporations from separately or individually bidding for the performance of a public work for the state, or any county, municipality, or levee board thereof; or if any person, association, firm or corporation shall prevent, by persuasion or reward, any other person, association, firm or corporation, or any one or more of them, from bidding for the performance of such public work, they, and each of them, shall be guilty of a misdemeanor, and shall be fined not less than twenty-five nor more than one thousand dollars.

Section 5009 of the Mississippi Code of 1906 provides:

All sums of money to be paid on any contract on behalf of the state, or any county, municipality or levee board thereof, when the provision of the last preceding section had been violated, shall not be collectible, nor shall the same be paid by any officer or board having the payment thereof.

Section 5010 of the Mississippi Code of 1906 provides:

Proceedings of any and every kind for forfeiture of charter, for forfeiture of right to do business in this state, for recovery of damages and all civil proceedings of any character whatever authorized by law for the execution and enforcement of the anti-trust laws of this state may be brought against any corporation in any county where it has a domicile or place of business, or where any of its officers or agents may be found.

Section 5011 of the Mississippi Code of 1906 provides:

Like proceedings against any two or more of any number of corporations or individuals, or of corporations and individuals believed to be parties to any trust and combine, may be brought in the county where the trust and combine was formed, or where it exists or is carried on, promoted, operated, practiced, employed, used or enjoyed; or in any county in which either of the defendants may have a domicile, or where an officer or agent of any defendant corporation may be found. And all such proceedings may be prosecuted to final judgment or decree against any one or more of the defendants thereto, notwithstanding there may be a dismissal, acquittal, verdict, judgment or decree in favor of the local or any other defendant.

Section 5012 of the Mississippi Code of 1906 provides:

Criminal prosecutions, under the anti-trust laws of this state, may be instituted and conducted to final judgment against any one or more of any number of corporations or individuals, or both in any county in which a violation of said laws has been committed by them or in any county in which they formed a trust and combine, or in which such trust and combine, though formed elsewhere, is by them, or any of them, carried on, promoted, employed, operated, used or enjoyed.

Section 5013 of the Mississippi Code of 1906 provides:

No person called as a witness in any prosecution or proceeding to enforce the anti-trust laws of this state,

though himself a defendant therein or an officer, attorney, agent or employee of a defendant or stockholder in a defendant corporation, shall be excused from testifying upon the ground that his evidence might criminate or tend to criminate himself; but every person, otherwise competent, when called as a witness in such cases, shall be required to testify and to disclose all facts known to him which are pertinent to the issue.

Section 5014 of the Mississippi Code of 1906 provides:

But the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying. A person so testifying shall not thereafter be liable to indictment or presentment by information, nor to prosecution or punishment for the offense with reference to which his testimony was given, and may plead or prove the giving of testimony accordingly in bar of such indictment, information or prosecution.

Section 5015 of the Mississippi Code of 1906 provides:

Every corporation shall be answerable for any unlawful act, contract, agreement, arrangement, understanding or combination done, made or entered into for and on its behalf by any officer, stockholder, agent or attorney permitted or suffered to manage, direct, regulate or control its business in that particular, and such unlawful act, contract, agreement, arrangement, understanding or combination shall be deemed and held to have been done, made or entered into by the corporation itself as fully as if done, made or entered into by its board of directors by regular vote duly entered upon the minutes.

Section 5016 of Mississippi Code, as amended by L. 1908, c. 204, provides:

It shall be the duty of the district attorneys in their several districts and of the attorney general of the state to enforce the anti-trust laws of this state by proceeding in the nature of quo warranto by injunction or any other appropriate remedy, civil or criminal, at law or in equity. Jurisdiction is hereby conferred upon the Chancery Court to hear and determine all suits arising out of violations of the anti-trust laws, and such courts may grant injunctions, appoint receivers, impose the penalties provided by law and enter such orders and decrees as may be necessary to prevent the continued operation of unlawful trusts and combines within this state.

Section 5017 of the Mississippi Code of 1906 provides:

Any corporation may be required under a subpoena duces tecum served upon its president, secretary or any of its directors, to produce in court and submit to inspection upon the trial of any proceeding, civil or criminal, under the anti-trust laws of this state, any books, minutes, records, papers, documents, vouchers or writings belonging to or in the possession of such corporation.

Section 5019 of the Mississippi Code of 1906 provides:

Any corporation failing or refusing to comply with the order of such subpoena duces tecum, when duly served as herein provided, shall be in contempt of court, and shall be punished by a fine of not less than one hundred dollars nor more than two thousand dollars.

Section 5020 of the Mississippi Code of 1906 provides:

No prosecution, pain, penalty or forfeiture for offenses committed under laws already existing at the time of the adoption of this chapter shall be in anywise remitted, released, or taken away by reason thereof of anything herein contained; but the same shall be proceeded with, adjudged, imposed and inflicted in conformity with the laws already existing and in conformity with all the provisions of this chapter which may be constitutionally applicable thereto; provided, that the trial court may impose upon each person or corporation in a trust and combine a fine of not less than two hundred nor more than five thousand dollars; or the court may not impose such fine but order and adjudge a forfeiture of its charter if a domestic corporation, or the forfeiture of its right or license to do business in this state if a foreign corporation; or the court may impose such fine and adjudge the forfeiture of charter or right or license to do business in this state; provided, that for offenses committed prior to the adoption of this chapter the court may not inflict both a fine and forfeiture of charter or license to do business in this state.

Section 5021 of the Mississippi Code of 1906 provides:

All acts and parts of acts in conflict with this chapter are hereby repealed; but no right, liability, pain, penalty, forfeiture or prosecution under laws existing prior to the adoption of this chapter shall be in anywise affected thereby, but the same may be asserted, prosecuted, declared, inflicted and imposed under the laws in force prior to the adoption of this chapter. This chapter shall

be liberally construed in all courts to the end that trusts and combines may be suppressed, and the benefits arising from competition in business preserved to the people of this state.

## COURT DECISIONS.

American Fire Insurance Co. et al *v.* State, 75 Miss., 24; 22 So. Rep., 99.

Greenville Compress and Warehouse Co. *v.* Compress and Warehouse Co., 70 Miss., 669.

Houck *v.* Wright, 77 Miss., 476.

B. F. Johnson Pub. Co. *v.* Mills, 79 Miss., 543.

Barataria Canning Co. *v.* Jouliau, 80 Miss., 555.

Kosciusko Oil Mill & Fertilizer Co. *v.* Wilson Cotton Oil Co., 90 Miss., 551.

State *v.* Jackson Cotton Oil Co., 48 So. Rep., 300.





## MISSOURI.

### STATUTES.

Chapter 98 of the Revised Statutes as amended in 1913, entitled "Pools, Trusts, Conspiracies and Discriminations."

SEC. 10298. Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any person or persons in restraint of trade or competition in the importation, transportation, manufacture, purchase or sale of any product or commodity in this state, or any article or thing bought or sold whatsoever, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and shall be punished as provided in this article.

SEC. 10299. Any person who shall create, enter into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding with any other person or persons to regulate, control or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience or repair, or any product of mining, or any article or thing whatsoever, of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or participate in any pool, trust, agreement, contract, combination, confederation or understanding, to fix or limit the amount (or) quantity of any article of manufacture, mechanism, (merchandise), commodity, convenience, repair, any product of mining, or any article or thing whatsoever of any class or kind bought and sold, or the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and be punished as provided for in this article.

SEC. 10300. Any two or more persons engaged in buying or selling any article of commerce, manufacture, mechanism, commodity, convenience, repair, any product of mining, or any article or thing of any class or kind whatsoever, who shall create, enter into, become members of or participate in any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing, or to limit competition in such trade by refusing to buy from or sell to any other person any such article or thing aforesaid, for the reason that such other person is not a member of or a party to such pool, trust, combination, confederation, association or understanding, or shall boycott or threaten any person from buying or selling to any other person who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding in such article or thing aforesaid, shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and punished as provided for in this article.

SEC. 10301. All arrangements, contracts, agreements, combinations or understandings made, or entered into between any two or more persons, designed or made with a view to lessen, or which tend to lessen, lawful trade, or full and free competition in the importation, transportation, manufacture or sale in this state of any product, commodity or article, or thing bought and sold, of any class or kind whatsoever, including the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, and all arrangements, contracts, agreements, combinations or understandings made or entered into between any two or more persons which are designed or made with a view to increase, or which tend to increase the market price of any product, commodity or article or thing, of any class or kind whatsoever bought and sold, including the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, are hereby declared to be against public policy, unlawful and void; and any person or persons creating, entering into, becoming a member of or participating in such arrangements, contracts, agreements, combinations or understandings shall be deemed and adjudged guilty of a conspiracy in restraint of trade, and punished as provided for in this article.

SEC. 10302. Any person violating any of the provisions of this act, or who shall do any act prohibited or declared unlawful by the provisions of this act, shall be adjudged guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the penitentiary not exceeding five years or by imprisonment in the county jail not exceeding one year, or by a fine of not less than five hundred dollars nor more than five thousand dollars, or by both such fine and imprisonment.

SEC. 10303. The several circuit courts of this state are hereby invested with jurisdiction to prevent and restrain any person or persons, corporation (,) partnership, individual or association of individuals from entering into any combinations, pools, agreements in the form of trusts, confederation, conspiracy or understanding declared illegal by this act, or any other law of this state relative to pools, trusts, conspiracies and unlawful combinations. And it shall be the duty of the attorney-general and of the prosecuting attorneys to institute proceedings in equity to prevent and restrain all violations of this act and of any other law concerning pools, trusts and conspiracies and unlawful combinations. Such proceedings may be by way of petition, setting forth the case and praying that such violation be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may, at any time, make such temporary restraining order or prohibition as shall be deemed just in the premises.

SEC. 10304. Any corporation created or organized by or under the laws of this state which shall violate any of the provisions of this act may, upon proper proof being made thereof in any court of competent jurisdiction in this state, be declared by the court to have forfeited its corporate rights and franchises, and the same may by the court be declared forfeited, void and of non-effect, and shall thereupon cease and determine; and such court may, by such judgment and decree, also declare all or any part of the property of such corporation forfeited unto the state, or in lieu of the forfeiture of its corporate rights and franchises, or in lieu of the forfeiture of all or any part of the property of such corporation, assess against it

a fine; and any corporation created or organized by or under the laws of any other state or country which shall violate any of the provisions of this act shall, upon proper proof being made thereof in any court of competent jurisdiction in this state, be declared by the court to have forfeited its right and privilege thereafter to do any business in this state, and the same shall by the court be declared forfeited, void and of non-effect, and shall thereupon cease and determine; and such court may, by judgment and decree, also declare all or any part of the property in this state of such corporation forfeited unto the state, or in lieu of the forfeiture of its right and privilege to do business in this state, or in lieu of the forfeiture of all or any part of the property of such corporation, assess against it a fine; and in all proceedings for the violation of any of the provisions of this act against any corporation created or organized under the laws of this or any other state or country, proof of the acts of any person who has been acting as the agent of such corporation in transacting its business in this state in the name, behalf or interest of such corporation shall be received as prima facie proof of the acts of the corporation itself; and it shall be the duty of the clerk of the court in which any judgment of forfeiture shall be rendered, as herein provided for, to certify the decree thereof to the secretary of state, and if it be an insurance company, also to the superintendent of the insurance department, who shall take notice and be governed thereby as to the corporate powers and rights of said corporation; and in case any court shall render a decree forfeiting all or any part of the property of any corporation violating the provisions of this act, such court shall also appoint a receiver thereof to dispose of the same in such manner as the court may direct, and the net proceeds arising from the sale thereof shall be paid into the state treasury, as shall all fines that may be imposed against any person or corporation violating the provisions of this act be paid into the state treasury.

SEC. 10305. Any person injured in his business or property by any other person or persons by reason of anything forbidden or declared to be unlawful by this act may sue therefor in any circuit court of this state in which the defendant or defendants, or any of them, reside, or have any officer, agent or representative, or in which any such defendant or any agent, officer or repre-

sentative may be found, without regard to the amount in controversy, and shall recover threefold the damages by him sustained, and the costs of suit, including a reasonable attorney's fee.

SEC. 10306. It shall not be lawful for any corporation to issue or to own trust certificates, or for any corporation, agent, officer or employee, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article.

SEC. 10307. Any purchaser of any article or commodity from any individual, company or corporation transacting business contrary to any provision of the preceding sections of this act shall not be liable for the price or payment of such article or commodity, and may plead this act as a defense to any suit for such price or payment.

SEC. 10308. That whenever the corporate rights and privileges of any corporation organized under the laws of this state shall have been declared forfeited by a judgment of a court of competent jurisdiction for any violation of the provisions of this act, and whenever the rights and privileges of any corporation organized under the laws of any other state or country to do business in this state, have been declared forfeited by a judgment of a court of competent jurisdiction for the violation of any of the provisions of this act it shall thereafter be unlawful for any person, corporation or association of persons to deal in or offer for sale in this state any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or article or thing whatsoever, or contract of insurance against loss or damage by fire, lightning or storm, made, produced, manufactured or dealt in by any corporation whose rights, franchises or privileges have been so declared to be forfeited; and the foregoing provisions of this section are hereby made applicable in all respects to the successors

or assigns of any corporations whose rights, franchises or privileges have been so declared to be forfeited.

SEC. 10309. That the word person or persons, used in this act, shall be deemed to include natural persons, partnerships, associations of persons and corporations created or organized by or under the laws of this state, or under the laws of any other state or country.

SEC. 10310. In any suit that is now pending, or which may hereafter be brought in which it is charged that any person, corporation, partnership or association of persons has created, entered into, become a member of or participate in any pool, trust, agreement, combination, confederation or understanding in restraint of trade or competition with any other person, corporation, partnership or association of persons, it shall not be necessary to allege or plead the manner in which, or when or where such pool, trust, agreement, combination, confederation or understanding was made or effected.

SEC. 10311. In any proceeding brought to enforce the provisions of this act, no witness shall be permitted to refuse to answer any question material to the matter in controversy, or shall be permitted to refuse to produce any books or papers material to such inquiry upon the ground that to produce such books and papers or to answer such questions might tend to incriminate him or subject him to a penalty or a forfeiture; but no person shall be subject to prosecution or to any action for a penalty or a forfeiture on account of any transaction, matter or thing concerning which he may testify or produce books or papers.

SEC. 10312. In any indictment or information for the violation of any of the provisions of this act, or for the doing of anything forbidden or declared unlawful by the provisions of this act, it shall be sufficient to allege that any person or persons have created, entered into, become members of or participated in any pool, trust, agreement, combination, confederation or understanding without alleging the manner in which such pool, trust, agreement, combination, confederation or understanding has been effected, and it shall not be necessary to allege how, when or where such pool, trust, agreement, combination, confederation or understanding was effected.

SEC. 10313. The enactment and taking effect of this article shall not have the effect to release or extinguish

any penalty, forfeiture or liability incurred by any corporation or person on account of the violation of any law of this state prior to the taking effect of this article.

Sec. 10313a. In any proceeding against or prosecution of any insurance company under the provisions of this article, it shall be *prima facie* evidence that such company is a member of a pool, trust, agreement, confederation or understanding to control, effect or fix the price or premium to be paid for insuring property against loss or damage by fire, lightning or storm, if it be shown that such company or any agent or representative thereof, in writing insurance, has used any insurance rate, or made use of or consulted any rate book, paper or card containing any insurance rate, prepared, published, kept or furnished by any person, association of persons or bureau employed by, representing or acting on behalf of any other insurance company or association in and about the making and publishing of insurance rates for use in any portion of this state.

Sec. 10314. Any person, firm, company, association or corporation, foreign or domestic, doing business in the state of Missouri and engaged in the production, manufacture, purchase, sale or distribution of any commodity or article of commerce in general use, that intentionally, for the purpose of destroying the competition of any regular, established dealer of such commodity, or to prevent the competition of any person, who in good faith intends and attempts to become such dealer, shall discriminate between different sections, localities, commodities, cities or towns of this state, by purchasing such commodity or article at a higher price or rate in one section, locality, community, city or town, than is paid for the same commodity or article by the said person, firm, company, association or corporation, in another section, locality, community, city or town; or by selling such commodity or article in one section, locality, community, city or town at a lower price or rate than such commodity or article is sold for by said person, firm, company, association or corporation in another section, locality, community, city or town, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of purchase to the point of manufacture or storage, or from the point of production, manufacture, or storage to the place of sale or distribution, or by giving or paying or promising

to give or pay a secret or private rebate or bonus in connection with the purchase, sale or distribution of any commodity or article of commerce, shall be deemed guilty of unfair discrimination which is hereby prohibited and declared unlawful.

SEC. 10315. Any person, firm, company, association or corporation violating any of the provisions of the preceding section, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual, found guilty of a violation thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or suffer both penalties.

SEC. 10316. All contracts or agreements made in violation of any of the provisions of the two preceding sections shall be void.

SEC. 10317. It shall be the duty of the prosecuting attorneys, in their counties, and the attorney-general to enforce the provisions of the preceding sections of this article by appropriate actions in courts of competent jurisdiction.

SEC. 10318. If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination within the terms of this article, it shall be the duty of the secretary of state to refer the matter to the attorney-general, who may, if the facts justify it in his judgment, institute proceedings in the courts against such corporation.

SEC. 10319. If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination, within the terms of this article, it shall be the duty of the secretary of state to immediately revoke the permit of such corporation to do business in this state.

SEC. 10320. If, after revocation of its permit, such corporation, or any other corporation not having a permit, and found guilty of having violated any of the provisions of this article, shall continue or attempt to do business in this state, it shall be the duty of the attorney-general, by a proper suit in the name of the state of Missouri, to oust such corporation from all business of every kind and character in said state of Missouri.

SEC. 10321. Nothing in this article shall be construed as repealing any other act, or part of act, but the reme-



dies herein provided shall be cumulative to all other remedies provided by law.

SEC. 10322. It shall be the duty of the secretary of state, on or about the first day of July of each year, to address to the president, secretary or managing officer of each incorporated company in this state, a letter of inquiry as to whether the said corporation has all or any part of its business or interest in or with any trust, combination or association of persons or stockholders, as named in the preceding provisions of this chapter, and to require an answer, under oath, of the president, secretary or managing officer of said company. A form of affidavit shall be enclosed in said letter of inquiry, as follows:

#### AFFIDAVIT.

State of Missouri, County of -----, ss.

I, -----, do solemnly swear that I am the ----- (president, secretary or managing officer) of the corporation known and styled -----, duly incorporated under the laws of ----- on the ----- day of -----, 19--, and now transacting or conducting business in the state of Missouri, and that I am duly authorized to represent said corporation in the making of this affidavit, and I do further swear that the said -----, known and styled as aforesaid, is not now and has not at any time within one year from the date of this affidavit, created, entered into, become a member of or participated in any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual, or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning (or) or storm; and that it has not entered into, or become a member of or a party to any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price (or) premium to be paid for insuring property against loss or damage by fire, lightning or storm; and that it has not issued and does not own any

trust certificates, and for any corporation, agent, officer or employee, or for the directors or stockholders of any corporation, has not entered into and is not now in any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which said combination, contract or agreement would be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees, with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or prevent, restrict or diminish the manufacture or output of any article; and that it has not made or entered into any (arrangement) contract or agreement with any person, association or persons or corporation designed to lessen (or) which tends to lessen, full and free competition in the importation, manufacture or sale of any article, product or commodity in this state, or under the terms of which it is proposed, stipulated, provided, agreed or understood that any particular or specified article, product or commodity shall be dealt in, sold or offered for sale in this state to the exclusion in whole or in part, of any competing article, product or commodity.

-----  
(President, Secretary or Managing Officer.)

Subscribed and sworn to before me, a -----,  
within and for the county of -----, this -----  
day of -----, 19--.

(Seal.)

And thereupon it shall become the duty of such corporation to make answer to such inquiry by filing or causing to be filed the affidavit prescribed herein. And on refusal to make oath in answer to said inquiry, or on failure to do so within thirty days from the mailing thereof, the secretary of state shall certify said fact to the prosecuting attorney of the county (the circuit attorney in the city of St. Louis) wherein said corporation is located, and it shall be the duty of such prosecuting attorney or circuit attorney, at the earliest practicable moment, in the name of the state, and at the relation of said prosecuting or circuit attorney, to proceed against such corporation for the forfeiture of its charter or certificate of incorporation, or its right or privilege to do business in this state; provided, however, that if such corporation

shall file the affidavit required by the provisions of this article prior to the rendition of final judgment in said action, the court may assess against such corporation, in lieu of a judgment forfeiting its charter or certificate of incorporation, or its right or privilege to do business in this state, a fine not to exceed five thousand (\$5,000) dollars, and not less than one hundred (\$100) dollars; provided, however, that any time before final judgment, if such corporation shall file or cause to be filed with the secretary of state the affidavit herein prescribed, the trial court may, in his discretion, and for good cause shown, upon the payment of all costs, together with the attorney's fees of ten dollars, to be paid to the prosecuting attorney (or the circuit attorney in the city of St. Louis) remit the penalty herein prescribed.

SEC. 10323. The affidavit required by this article shall be made by the president, secretary, treasurer or managing officer of such corporation in this state, and shall be made before some person authorized to administer oaths in this state.

SEC. 10324. Every person who shall make, or cause to be made, and file or cause to be filed, said affidavit, knowing the facts stated therein to be false, shall, on conviction, be adjudged guilty of perjury, and shall be punished by imprisonment in the penitentiary for a term not exceeding seven years.

SEC. 10325. It shall be the duty of the secretary of state, at any time upon satisfactory evidence that any company or association of persons duly incorporated under the laws of this or any other state, doing business in this state, has entered into any trust (,) combination or association, in violation of the preceding sections of this article, to demand that it shall make the affidavit as above set forth in this article as to the conduct of its business. In case of a failure of compliance on the part of the corporation, then the same procedure shall ensue as is provided in section 8980 of this article; provided, that no person shall be subject to any criminal prosecution on account of any matter or thing truthfully disclosed by the affidavit required by this article; and provided further, that in any prosecution or proceeding brought to enforce the provision of this article, no witness shall be permitted to refuse to answer any question material to the matter in controversy, or shall be permitted to refuse to produce any books or papers material to such inquiry upon the ground

that to produce such books and papers or to answer such question might tend to incriminate him or subject him to a penalty or a forfeiture; but no person shall be subject to prosecution or to any action for a penalty or a forfeiture on account of any transaction, matter or thing concerning which he may testify or produce books or papers.

SEC. 10326. It shall be the duty of the attorney-general, the circuit attorney of the city of St. Louis, and the prosecuting attorney of each county, respectively, to enforce the provisions of this article. The attorney-general, the circuit or prosecuting attorneys shall institute and conduct all suits begun in the circuit courts, and upon appeal the attorney-general shall prosecute said suits in the supreme court and courts of appeal. As compensation for his services in this behalf, the attorney-general shall be entitled to his actual expenses incurred in the (prosecution) of such suits, to be paid by the defendant or defendants when judgment is rendered for the state. The circuit and prosecuting attorneys shall receive for their compensation one-fourth of the penalty collected.

SEC. 10327. In all suits instituted under this article to forfeit the charter of corporations, or to forfeit the right of a corporation to do business in this state, where a judgment of forfeiture is obtained and the cause is not appealed to the supreme court or court of appeals, the circuit court rendering such judgment shall allow the circuit or prosecuting attorney a fee of not less than twenty-five (\$25) dollars nor more than five hundred (\$500) dollars, to be paid out of the assets of said corporation; and when the attorney-general takes part in said prosecution, he shall be entitled to his actual expenses, to be paid in like manner.

SEC. 10328. It is hereby made the duty of all county officers in the state to furnish to the secretary of state any information which he may request of them, to enable him the more fully to execute the duties imposed upon him by this article, and for such services the said county officer(s) shall be paid by their respective counties, upon allowances by the county court, such fees as would accrue for like services for the county.

SEC. 10329. Whenever any proceeding shall be commenced in any court of competent jurisdiction in this state by the attorney-general against any corporation or corporations, individual or individuals, or associations of

individuals, or joint stock associations or co-partnership, under the law against the formation and maintenance of pools, trusts of any kind, monopolies in commodities, combinations or organizations in restraint of trade, to dissolve the same or to restrain their formation or maintenance in this state, then in such case, if the attorney-general desires to take the testimony of any officer, director, agent or employee of any corporation or joint stock association proceeded against, or in case of a co-partnership, any member of said partnership, or any employee thereof, in any court in which said action may be pending or before any person duly authorized by any court to take testimony in any such action; and the individual or individuals, whose testimony is desired, are without the jurisdiction of the courts of this state, or reside without the state of Missouri, then, in such case, the attorney-general shall file in said court, in term time, or in vacation, or with any person, duly authorized to take the testimony in such case, a statement, in writing, setting forth the name or names of the persons or individuals whose testimony he desires to take, and the time when, and the place in the state where he desires the said persons to appear; and, thereupon, the court in which, or one of the judges thereof, or the person before whom testimony is being taken, shall issue immediately a notice, in writing, directed to the attorney or attorneys of record in said cause, or any agent, officer or employee of any corporation, joint stock association or co-partnership which are parties to said action, notifying said attorneys of record, or officer, agent or employee, that the testimony of the person or persons named in the application of the attorney-general is desired, and requiring said attorney or attorneys of record, or said officer, agent or employee, to whom said notice is delivered, or upon whom the same is served, to have said officer, agent or employee or representative of said co-partnership or agent thereof, whose evidence it is desired to take at the place named in the application of the attorney-general, and at the time fixed in said application, then and there to testify; provided, however, that the said application shall always allow in fixing said time, the same number of days for travel to reach the designated point in Missouri that would be now allowed by law in case of taking depositions; provided, also, in ad-

dition to the above named time, six days shall be allowed for the attorney or attorneys of record; or the agent, officer or employee on whom notice is served, to notify the person or persons whose testimony is to be taken. Service of such notice and the return thereon, in writing, may be made by any one authorized by law to serve a subpoena; provided, that no such witness shall be permitted to refuse to produce any books or papers in accordance with an order made under the provisions of this article, or to answer any question in reference to the subject-matter of such litigation, upon the ground that to produce such books and papers, or to answer such questions, would tend to incriminate him or subject him to a penalty or a forfeiture; but no such witness shall be liable to prosecution, or subject to an action of penalty or forfeiture on account of any transaction, matter or thing concerning which he may testify or produce books or papers.

SEC. 10330. Whenever any attorney or attorneys of record, or any agent, officer or employee of any such corporation, joint stock association or co-partnership, shall be notified, as above provided, to request any officer, agent, director or employee to attend before any court or before any person authorized to take the testimony in said proceeding, and the person or persons whose testimony is requested as above provided, shall fail to appear and testify and produce whatever books, papers and documents they may be ordered to produce by the court, or the officer authorized to take said evidence, then it shall be the duty of the court, upon the motion of the attorney-general, to strike out the answer, motion, reply, demurrer or other pleading then or thereafter filed in said action or proceeding by said corporation, joint stock association or co-partnership, whose officer, agent, director or employee has neglected or failed to attend and to testify and produce all books, papers and documents he or they shall have been ordered to produce in said action by the court or person authorized to take said testimony; and said court shall proceed to render judgment by default against said corporation, joint stock association or co-partnership.

SEC. 10331. And it is further provided, that in case any officer, agent, employee, director or representative of any corporation, joint stock association or co-partnership in such proceeding as hereinbefore men-

tioned, who shall reside or be found within this state, shall be subpoenaed to appear and testify or to produce papers, books and documents, and shall fail, neglect or refuse to do so, then the answer, motion, demurrer or other pleading then or thereafter filed by said corporation, joint stock association or co-partnership in any such proceeding shall, on motion of the attorney-general, be stricken out and judgment in said cause rendered against said corporation, joint stock association or co-partnership.

SEC. 10332. For the purpose of determining whether an action or proceeding should be commenced against any pool, trust, conspiracy or combination in restraint of trade, the attorney-general may examine and procure the testimony of witnesses in the manner herein prescribed.

SEC. 10333. Whenever the attorney-general deems it necessary or proper before beginning any action or proceeding against any pool, trust conspiracy or combination made, arranged, agreed upon or entered into whereby a monopoly in the manufacture, production or sale in this state of any article or commodity is or may be sought to be created, established or maintained, or whereby competition in this state in the supply or price of any article or commodity is or may be restrained or prevented, then in such case the attorney-general may present to any justice of the supreme court an application, in writing, for an order directing such persons, as the attorney-general may require, to appear before a justice of the supreme court or any examiner designated in said order and answer such relevant and material questions as may be put to them concerning any illegal contract, arrangement, agreement or combination in violation of the laws of this state against pools, trusts, agreements, combinations and conspiracies in restraint of trade, or to regulate, fix or maintain the price of any commodity or to create a monopoly therein, if it appears to the satisfaction of the justice of the supreme court to whom the application for the order is made that such an order is necessary or expedient, then such order shall be granted. Such order shall be granted without notice, unless notice is required to be given by the justice of the supreme court to whom the application is made, in which event an order to show cause why such application should not be granted shall be made containing such preliminary injunction or stay as may appear to said justice to be proper or expedient,

and shall specify the time when and the place where the witnesses are required to appear, and such examination shall be held in the city of Jefferson. The justice of the supreme court or the examiner may adjourn such examination from time to time and witnesses must attend accordingly.

SEC. 10334. The order for such examination must be signed by the justice making it; and the service of a copy thereof, with an endorsement by the attorney-general signed by him, to the effect that the person named therein is required to appear and be examined at the time and place and before the justice or referee specified in such endorsement, shall be sufficient notice for the attendance of witnesses. Such endorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession or under his control relating to the subject of such examination; provided, however, that the production of books and papers for inspection shall always be subject to the order of the supreme justice who has ordered such examination, and either party may, by a petition, in writing, ask that the said justice pass on the question as to whether or not said books and papers should be produced and examined and introduced in evidence. The order to appear as a witness may be served and return of service made in the same manner and by the same officer by whom a subpoena may now be served.

SEC. 10335. The testimony of each witness must be subscribed by him, and all testimony taken by such justice or examiner appointed must be certified and delivered by such justice or examiner to the attorney-general at the close of the examination. The justice or examiner shall cause said testimony to be taken down by a competent stenographer; provided, that no witness shall be permitted to refuse to produce books or papers in accordance with an order made under the provision of this article, or to answer any questions in reference to the subject-matter of such litigation upon the ground that to produce such books and papers or to answer such questions would tend to incriminate him or subject him to a penalty or a forfeiture; but no such witness shall be liable to prosecution, or subject to an action of penalty or forfeiture on account of any transaction, matter or thing concerning which he may testify or produce books or papers.



SEC. 10336. An examiner appointed under this article shall have his power and authority specified in the order appointing him. And he shall have all the ordinary power and authority of an examiner appointed by the supreme court, in addition to what special duties may be devolved on him by the order of appointment.

SEC. 10337. If any witness or witnesses be properly served, as herein provided, with notice to appear and testify, and they fail to obey said notice, or appearing, refuse to testify, the attorney-general may file a statement, in writing, with the supreme court justice setting out such facts, and said justice may, if he deems it proper, issue a citation to said parties causing them to forthwith appear and show cause why he or they should not be fined or imprisoned, or both, for contempt. And in such contempt proceedings the justice of the supreme court shall have full power to either fine or imprison or both, as a punishment for either failing to appear and testify, or appearing, failing to testify, or to produce books and papers when so ordered to do.

SEC. 10338. The supreme court justice may make such order concerning the taxation and payment of costs in these proceedings against either the state of Missouri or the person examined, or any corporation, co-partnership, joint stock company or combination of persons interested in or connected in any way with the subject of such examination. Costs taxed shall be collected in the ordinary way costs are now collected in the supreme court, and an itemized statement thereof shall be filed with the clerk of the supreme court, to whom all costs must be paid.

#### COURT DECISIONS.

State ex rel. Crow, Attorney-General *v.* Ætna Insurance Co. et al. Same *v.* American Cent. Insurance Co., 51 S. W. Rep., 413.

National Lead Co. *v.* S. E. Grote Paint-Store Co., St. Louis Court of Appeals, May 2, 1899.

State ex rel. Crow, Attorney-General *v.* Firemen's Fund Insurance Co. et al., 152 Mo., 1; 52 S. W. Rep., 595.

State ex rel. Crow *v.* Armour Packing Co., 173 Mo., 356; 61 L. R. A., 464.

National Lead Company *v.* S. E. Grote Paint Store Co., 80 Mo. App., 247.

Froelich *v.* Musicians' Mut. Ben. Asso., 93 Mo. App., 383.

Walsh *v.* Association of Master Plumbers, 97 Mo. App., 280.

State ex rel. Crow *v.* Continental Tobacco Co., 177 Mo., 1.

## MONTANA.

### CONSTITUTION.

ART. XV, SEC. 20. No incorporation, stock company, person or association of persons in the State of Montana shall directly or indirectly combine or form what is known as a trust, or make any contract with any person, or persons, corporations, or stock company, foreign or domestic, through their stockholders, trustees or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce, or of the product of the soil, for consumption by the people. The legislative assembly shall pass laws for the enforcement thereof by adequate penalties to the extent, if necessary for that purpose, of the forfeiture of their property and franchises, and in case of foreign corporations prohibiting them from carrying on business in the state.

### STATUTES.

Every person, corporation, stock company or association of persons in this state who, directly or indirectly, combine or form what is known as a trust, or make any contract with any person or persons, corporation or stock companies, foreign or domestic, through their stockholders, directors, officers or in any manner whatever, for the purpose of fixing the price or regulating the production of any article of commerce,—“The phrase” ‘articles of commerce’ as herein employed shall and does include not only those articles which are generally, popularly and legally known as articles of commerce, but also gas, water, waterpower, electric light and electric power for whatever purpose used or employed”—or of the product of the soil for consumption by the people, or to create or carry out any restriction in trade, to limit productions, or increase or reduce the price of merchandise or commodities, or to prevent competition in merchandise or commodities, or to fix a standard or figure whereby the price of any article of merchandise, commerce

or product, intended for sale, use or consumption, will be in any way controlled, or to create a monopoly in the manufacture, sale or transportation of any such article or to enter into an obligation by which they shall bind others or themselves not to manufacture, sell or transport any such articles below a common standard or figure or by which they agree to keep such article or transportation at a fixed or graduated figure, or by which they settle the price of such article, so as to preclude unrestricted competition, is punishable by imprisonment in the county jail for a period not less than twenty-four hours, or more than one year, or by fine not exceeding twenty-five thousand dollars, or both. (L. 1909, c. 97, Sec. 1.)

The provisions of this Act do not apply to any arrangements, agreement, or combination between laborers, made with the object of lessening the number of hours of labor or increasing wages. (Id., Sec. 2.)

No person shall be excused from testifying in any prosecution brought pursuant to the provisions of this Act, but no person testifying for the prosecution shall be punished or prosecuted in any manner whatsoever for any act committed by him personally, as to which he is called upon to testify in a prosecution against any person or corporation, stock company or association. (Id., Sec. 3.)

[Chapter 7, Acts 1913.]

A BILL For an Act entitled: "An Act to prohibit unfair competition and discrimination, and providing a penalty for the infraction of the provisions thereof."

*Be it enacted by the Legislative Assembly of the State of Montana:*

SECTION 1. Any person, firm or corporation, foreign or domestic, doing business in the State of Montana, and engaged in the production, manufacture or distribution of any commodity in general use, that intentionally, for the purpose of destroying the competition of any regularly established dealer in such commodity, or to prevent the competition of any person, firm or corporation who in good faith intends and attempts to become such dealer, shall discriminate between different sections, communities or parts of this State, by selling such commodity at a lower rate or price in one section, city or community, or any portion thereof, than such person, firm or corporation, foreign or domestic, charges for such commodity

in another section, community or city, after equalizing the distance from the point of production, manufacture or distribution and freight rates therefrom, shall be deemed guilty of unfair discrimination.

SEC. 2. If complaint shall be made to the Attorney General that any corporation is guilty of unfair discrimination as defined by this Act, he shall forthwith investigate such complaint, and for that purpose he shall subpoena witnesses, administer oaths, take testimony and require the production of books or other documents, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the State in the proper Court to annul the charter or revoke the permit of such corporation, as the case may be, and to permanently enjoin such corporation from doing business in this State, and if in such action the Court shall find that such corporation is guilty of unfair discrimination as defined by this Act, such Court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this State.

SEC. 3. Any person, firm or corporation violating the provisions of Section One (1) of this Act, whether as principal or agent, shall, upon conviction thereof be fined not less than Two Hundred (200) Dollars nor more than Ten Thousand (10,000) Dollars, for each offense.

SEC. 4. Nothing in this Act shall be construed as repealing any other Act or part of an Act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

SEC. 5. This Act shall take effect and be in force from and after its passage and approval.

Approved February 6, 1913.

[Chapter 8, Acts 1913.]

A BILL For an Act entitled: "An Act to prohibit unfair competition and discrimination, and providing a penalty for the infraction of the provisions thereof."

*Be it enacted by the Legislative Assembly of the State of Montana:*

SECTION 1: Any person, firm or corporation, foreign or domestic, doing business in the State of Montana, and engaged in the buying, selling, production, manufacture or distribution of any commodity in general use, that intentionally, for the purpose of destroying the competition

of any regularly established dealer in such commodity, or to prevent the competition of any person, firm or corporation, who in good faith intends and attempts to become such dealer, shall discriminate between different persons, sections or communities in, or parts of this State by buying such commodity at a higher rate or price in one section, city or community, or any portion thereof, than such person, firm or corporation, foreign or domestic, pays for such commodity in another section, community or city, after equalizing the distance from the point of production, manufacture or distribution and freight rates therefrom, shall be deemed guilty of unfair discrimination.

SEC. 2. If complaint shall be made to the Attorney General that any corporation is guilty of unfair discrimination as defined by this Act, he shall forthwith investigate such complaint, and for that purpose he shall subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the State in the proper Court to annul the charter or revoke the permit of such corporation, as the case may be, and to permanently enjoin such corporation from doing business in this State; and if in such action the court shall find that such corporation is guilty of unfair discrimination as defined by this Act, such Court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this State.

SEC. 3. Any person, firm or corporation violating the provisions of Section 1 (One) of this Act, whether as principal or agent, shall, upon conviction, thereof be fined not less than Two Hundred (\$200) Dollars, nor more than Ten Thousand (\$10,000) Dollars, for each offense.

SEC. 4. Nothing in this Act shall be construed as repealing any other Act or part of an Act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

SEC. 5. This Act shall take effect and be in full force from and after its passage and approval.

Approved February 6, 1913.

#### COURT DECISIONS.

*Mac Ginnis v. Boston & Montana Con. Mining Co.*, 29 Mon., 428.

*State v. Cudahy Packing Co. et al.*, 33 Mon., 179.

## NEBRASKA.

### CONSTITUTION.

ART. XI, SEC. 3. No railroad corporation or telegraph company shall consolidate its stock, property, franchises, or earnings, in whole or in part, with any other railroad corporation or telegraph company owning a parallel or competing line; and in no case shall any consolidation take place, except upon public notice of at least sixty days to all stockholders, in such manner as may be provided by law.

### STATUTES.

#### CHAPTER 91A—TRUSTS.

6281 Section 1.<sup>1</sup> That a trust is a combination of capital skilled or acts by any person or persons to fix the price of any article or commodity of trade, use or merchandise, with the intent to prevent others from conducting or carrying on the same business or selling or trafficking in the same article, use or merchandise, or a combination of capital, skill or acts by two or more persons or by two or more of them for either, any or all of the following purposes: 1. To create or carry out restrictions in trade. 2. To limit or reduce the production or

<sup>1</sup> Sec. 1 of "An act to define trusts and conspiracies against trade and business, declaring the same unlawful and void, and providing means for the suppression of the same, and remedies for persons injured thereby, and to provide punishment for violations of this act, and to repeal chapter ninety-one a (91a), entitled 'Trusts,' of the Compiled Statutes of Nebraska for the year 1895." Laws 1897, chap. 79. Took effect July 10, 1897. See *State v. Neb. Dis. Co.*, 29 Neb., 700; *Mollyneaux v. Wittenberg*, 39 Id., 547; *Downing v. Lewis*, 56 Id., 386. Lumber dealers' associations. This chapter does not grant special privileges, and is not special legislation within sec. 15, art. III, Const. Passage was constitutional. *Clelland v. Anderson*, 66 Id., 252. But see *Niagara Fire Ins. Co. v. Cornell*, 110 Fed. Rep., 816. Conspiracy where one is driven out of business a tort. *Clelland v. Anderson*, 66 Neb., 276. Right of action passes to assignee in bankruptcy. S. C., 75 Id., 273. Art. 1 does not limit art. 2. *State v. Omaha Elevator Co.*, 75 Id., 637. Agreement by lumber dealer to "protect another by asking higher price, or to divide territory and fix prices," is a violation of statute. *State v. Adams*, 81 Id., 392.

increase or reduce the price of merchandise or commodities. 3. To prevent competition in insurance, either life, fire, accident or any other kind, or in manufacture, making, constructing, transportation, sale or purchase of merchandise, produce or commodities. 4. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established upon any article of merchandise, produce or manufacture of any kind intended for sale, use or consumption in this state; to establish any pretended agency whereby the sale of any such article, commodity, merchandise or product shall be covered up, concealed or made to appear to be for the original vendor, for a like purpose or purposes, and to enable such original vendor, producer or manufacturer to control the wholesale or retail price of any such article of merchandise, product or commodity after the title to the same shall have passed from such vendor or manufacturer. 5. To make or enter into, carry on or carry out any contract, obligation or agreement of any kind or description by which they shall bind, or have heretofore bound themselves not to sell, dispose of, traffic in or transport any article of merchandise or commodity, or article of trade, product, use, merchandise, consumption or commerce, below a common standard figure, card or list price, or by which they shall agree in any manner to keep the price of such article, product, commodity or transportation, at a fixed or graduated figure or price, or by which they shall in any manner establish or settle the price of any article of merchandise, commodity, or of insurance, fire, life or accident, or transportation between them or between themselves and others, or with the intent to preclude, or the tendency of which is to prevent or preclude a free and unrestricted competition among themselves or others or the people generally in the production, sale, traffic or transportation of any such article of merchandise, product or commodity or conducting a like business or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale, production or transportation of any such article of merchandise, product or commodity or the carrying on of any such business, that its price might in any manner be affected thereby.

6282-6294 Secs. 2-14. [Repealed. *State v. Elevator Co.*, 75 Neb. 637.]



## GRAINMEN.

6295 Sec. 15.<sup>1</sup> That it shall be unlawful for any person, partnership, company, association or corporation engaged in the business of grain dealing or owning or operating any grain elevator, or in buying, selling, handling, consigning, shipping or transporting grain, to enter into any understanding, contract, agreement, or combination with any other persons, company, partnership, association or corporation, whether within or without this state engaged in a like business, to form, enter into or maintain or contribute money or anything of value to any trust, pool, combination or association of persons, partnerships, companies, associations or corporations of whatever name, which has for any of its objects the prevention of competition among buyers, sellers or dealers in grain, or which by any of its acts, or the acts of any of its officers, members, agents or employes, hinders or prevents or tends to hinder or prevent the fullest competition in the purchase, sale or dealing in grain by any person, partnership, company, association or corporation outside of, or not a member of, or not doing business by or through such trust, pool, combination or association, or any of its members, officers, agents or employes, or which has for one of its objects the prevention of competition by requiring or compelling its members not to deal with shippers or dealers in grain not members of such trust, pool, combination or association; or which requires its members to refuse to sell, purchase or consign any grain, to any person, company, partnership or corporation which purchases or receives consignment of grain from any person, company or corporation not a member of such trust, pool, combination or association, or not doing business through the same or

<sup>1</sup> Secs. 15-18. "An act to prohibit combinations among grain elevator men and to prohibit any person, company, partnership, association or corporation engaged in the business of grain dealing or owning or operating any grain elevator, or in the buying, selling, handling, consigning or transporting grain from entering into any understanding, contract, agreement or combination with any other person, company, partnership, association or corporation to form, enter into, maintain or contribute to any trust, pool, combination or association of whatever name, having for any of its objects the prevention of competition among buyers, sellers or dealers in grain not members of, or not doing business through such trust, pool, combination or association, by means of preventing such persons from finding a market for their grain and by intimidating and preventing purchase[r]s and exporters from buying from any person, not a member of and not doing business through such trust, pool, combination or association; and to provide a penalty for the violations of this act." LAWS 1897, ch. 80. Took effect July 10, 1897. See, also, sec. 245x<sup>12</sup>, Crim. Code.

any of its members; or which has for any of its objects the prevention of any person, company, partnership, association or corporation not shipping grain through grain elevators, whether owned or operated by members of such trust, pool, combination or association, or not, from finding purchasers for their grain by boycotting or threatening to boycott such purchasers. [1897, chap. 80, § 1.]

6296 Sec. 16. That in any case, any person, company, partnership, association, corporation, trust, pool or combination of whatever name shall do, cause to be done, or permit to be done, any act, matter or thing in this act prohibited or declared to be unlawful, such person, partnership, company, association, corporation, trust, pool or combination shall be liable to the person, partnership, company, association or corporation injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this act, together with a reasonable attorney fee, to be fixed by the court, in every case of recovery to be taxed as part of the costs in the case; and the property of any person who may be a member of or interested in any such trust, pool, combination or association, violating the provisions of this act shall be liable for the full amount of such judgment and may be levied upon and sold to satisfy the same. [Id., § 2.]

6297 Sec. 17. Any person, partnership, company, association or corporation subject to the provisions of this act, or any trust, combination, pool or association, or any director, officer, receiver, trustee, employe agent or person, acting for or employed by them, or either of them, who shall violate any of the provisions of section 1 of this act shall be declared to be guilty of a felony and shall upon conviction thereof be fined in any sum not less than one thousand dollars and not exceeding two thousand dollars, and any person, officer, member, agent or employe of any trust, combination, pool or association violating the provisions of section 1 of this act, may in addition to the foregoing fine, be sentenced by the court to a period not exceeding six months to be served in the penitentiary of the state. That half of the fine so imposed shall go to the person or persons who furnish information and evidence on which a conviction shall be founded. [Id., § 3.]

6298 Sec. 18. Any person who may be aggrieved or injured by section 1 of this act may prosecute the violator in a criminal action by his own attorney, without the in-

tervention of the county attorney, and in case of conviction the court shall allow a reasonable attorney fee to be taxed as costs in the case. [Id., § 4.]

CHAPTER 117 (ACTS 1913).

AN ACT To amend Section 26 of Chapter 91A of the Compiled Statutes of Nebraska for 1911, being Section 3777 of the Report of Commission for Revision of General Laws of Nebraska, for 1913, [C. A. S., § 12012] and to repeal said original section as it now exists.

Section 1. That Section 26 of Chapter 91A of the Compiled Statutes of Nebraska for 1911, being Section 3777 of the Report of Commission for Revision of General Laws of Nebraska, for 1913, [C. A. S., § 12012] be and the same is hereby amended to read as follows: Any person, firm, or company, association or corporation, foreign or domestic, doing business in the state of Nebraska and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities, or cities of this state by selling such commodity at a lower rate in one section, community or city, than is charged for said commodity by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful. Proof that any person, firm, company, association or corporation has been discriminating between different sections, communities and cities of this state by selling a commodity at a lower rate in one section, community or city, than is charged for said commodity by said party, in another section, community or city, after making an allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point of production, if a raw material, and from the point of manufacture, if a manufactured product, shall be prima facie evidence that the party so discriminating is guilty of unfair discrimination. Any person, firm, company, association, or corporation, for-

eign or domestic, doing business in the State of Nebraska engaged in the business of collecting or buying any product, commodity or property of any kind, that shall intentionally, for the purpose of injuring or destroying the business of a competitor in any locality, discriminate between the different sections, communities or cities of this state by buying any product, commodity, or property of any kind, and paying therefor a higher rate or price in one section, community, or city than is paid for the same kind of product, commodity or property by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of the transportation from the point where the same is purchased to the market where it is sold, or intended to be sold, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful. Proof that any person, firm, company, association or corporation has been discriminating between different sections, communities and cities by buying any product, commodity or property of any kind, and paying therefor a higher rate or price in one section, community or city than is paid for the same kind of product, commodity or property by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of transportation from the point where the same is purchased to the market where same is sold or intended to be sold shall be prima facie evidence that the party so discriminating is guilty of unfair discrimination.

Sec. 2. That section 26 of Chapter 91A of the Compiled Statutes of Nebraska for 1911, being Section 3777 of the Report of the Commission for Revision of General Laws of Nebraska, for 1913, [C. A. S., § 12012] as it now exists, be and the same is hereby repealed.

Approved, April 15, 1913.

6301f Sec. 27. Any person, firm, company, association or corporation violating any of the provisions of the preceding section, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual, found guilty of a violation thereof, shall be fined not less than Five Hundred Dollars (\$500.00) nor more than Five Thousand Dollars (\$5,000.00), or be imprisoned in the county jail not to exceed one year, or suffer both penalties. [Id., § II.]

6301g Sec. 28. All contracts or agreements made in violation of any of the provisions of the two preceding sections shall be void. [Id., § III.]

6301h Sec. 29. It shall be the duty of the county attorneys, in their counties, and the attorney general, to enforce the provisions of the preceding sections of this act by appropriate actions in courts of competent jurisdiction. [Id., § IV.]

#### CHAPTER 114 (ACTS 1913).

AN ACT Amending Section 12016 of Cobbey's Annotated Statutes for 1911, [C. S., Ch. 91a, § 30] relating to prosecution of corporations charged with unfair discrimination, requiring the Attorney General to investigate upon complaint, and to repeal said original section and all acts and parts of acts in conflict herewith.

Section 1. That Section 12016 of Cobbey's Annotated Statutes for 1911, [C. S., Ch. 91a, § 30] is hereby amended to read as follows:

Section 12016. If complaint shall be made to the Attorney General that any corporation is guilty of unfair discrimination as defined by this act, he shall investigate such complaint and for that purpose he may subpoena witnesses, administer oaths, take testimony, and require the production of books and other documents, and, if in his opinion sufficient grounds exist therefor he may prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit of such corporation as the case may be, and to permanently enjoin such corporation from doing business in this state, and if in such action the court shall find that such corporation is guilty of unfair discrimination as defined by this act, such court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this state.

Sec. 2. That said original section 12016 of Cobbey's Annotated Statutes for 1911, [C. S., Ch. 91a, § 30] and all acts and parts of acts in conflict herewith are hereby repealed.

Approved, April 15, 1913.

6301j Sec. 31. If any corporation, foreign or domestic, authorized to do business in this state, is found guilty of unfair discrimination, such finding shall cause a for-

feiture of all the privileges and rights conferred by the laws of this state upon corporations, and shall bar its right to do business in this state. [Id., § VI.]

6301k Sec. 32. If any corporation having been found guilty of a violation of any of the provisions of this act, shall continue or attempt to do business in this state, it shall be the duty of the attorney general by a proper action in the name of the State of Nebraska, to oust such corporation from all business of every kind and character in this state. [Id., § VII.]

6302 Sec. 33. Nothing in this act shall be construed as repealing any other act, or part of act, but the remedies herein provided shall be cumulative to all other remedies provided by law. [Id., § VIII.]

#### ARTICLE II.—RESTRAINTS—MONOPOLIES, REBATES.

6302a Section 1. That every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, within this state, is hereby declared to be illegal. Every person who shall make any such contract or engage in any such combination or conspiracy, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.<sup>1</sup>

6302b Sec. 2. That every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce, within this state, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

6302c Sec. 3. That any property owned under any contract or by any combination, or pursuant to any conspiracy (and being the subject thereof), mentioned in the foregoing sections of this act, shall be forfeited to the state.

<sup>1</sup> "An act to protect trade and commerce against unlawful restraints and monopolies, and to prohibit the giving or receiving of rebates on the transportation of property, and to provide a penalty for the violation thereof." Laws 1905, H. R. 110. In effect July 1, 1905. Repeals by implication art. I, except sec. 1. Not affected by secs. 15-18, chap. 91a, nor sec. 245x<sup>12</sup>, Crim. Code. State v. O. Elevator Co., 75 Neb., 637. Indictments should allege acts complained of were in restraint of trade within this state. Proper respondents. Howell v. State, 83 Id., 448.

## CHAPTER 145 (ACTS 1913).

AN ACT To amend Section 12031 of Cobbey's Annotated Statutes of Nebraska, 1911, [C. S., Ch. 91a, Art. 2, § 4] and to repeal said original section as now existing.

Section 1. That Section 12031 of Cobbey's Annotated Statutes of Nebraska for the year 1911 be amended so as to read as follows:

That no corporation, joint stock company or other association, whose stockholders are not personally liable for their debts, except corporations incorporated under the laws of the state of Nebraska, and those required by law to file annual reports with the Auditor of Public Accounts, and common carriers and corporations owning or using property exclusively in connection with the business of transportation and corporations engaged in furnishing additional accommodation to passengers as such while being carried by such carriers, shall engage in business within this state, or continue to carry on such business, unless it shall comply with the following conditions: It shall file a statement in the office of the attorney general of this state, signed and sworn to by its president, its treasurer, its general manager, and a majority of the directors, or by persons exercising the powers usually exercised by such officers and directors of such corporations, joint stock companies, and other associations, on or before the 15th day of September, in the year 1906, and shall on or before the 15th day of September, in each year thereafter file a like statement for the year ending with the 30th day of June in said year, respectively, showing:

(a) The amount of its capital stock. (b) The market value of the same. (c) How much of the same has been paid in full in cash; or, if the same has not been paid in full in cash, what has been received by the said corporation, joint stock company, or other association, in lieu thereof, and the value of whatever shall have been so received by it. (d) The names of all the officers and directors of such corporation, joint stock company, or other association, and all agents entrusted with the general management of its affairs. (e) The amount it has paid in dividends during the same period, the rate of percentage of such dividends, and times of paying the same. (f) A statement of all the stock owned by it of any other corporation, joint stock company, or other association, specifying the corporation, joint stock company, or other

association, and the number of and value of shares in each; the amount of its own stock held by other corporations, joint stock companies or other associations, and the value thereof; and the amount of stock in other corporations, joint stock companies, or other associations held in trust for it or in which it has any interest, directly or indirectly, absolute or conditional, legal or equitable, specifying the corporations, joint stock companies or other associations. (g) It shall also on or before the 30th day of June, in the year 1906, file in the office of the attorney general of this state, an undertaking signed by said officers, general managers, and directors, that they will comply with the provisions of this and all other laws of this state in the management of the affairs of said corporation, joint companies, or other associations; and that they accept the provisions and liabilities of this act, and the obligations by it imposed, so long as they shall continue to hold or exercise said office or authority, and shall thereafter within ten days of their entering upon the duties of their offices, file a like undertaking signed by every officer, general manager and director thereof elected or appointed to such office or employment. This statement shall be in addition to all statements now or hereafter required by law, or by any other public authority in this state.

Sec. 2. That Section 12031 of Cobbey's Annotated Statutes of Nebraska for the year 1911 [C. S., Ch. 91a, Art. 1, § 4] as heretofore existing be and the same is hereby repealed.

Sec. 3. Whereas an emergency exists, this act shall take effect and be in force from and after its passage and approval.

Approved, April 17, 1913.

6302e Sec. 5. The attorney general of this state may at any time require of any corporation, joint stock company, or other association so engaged any statement he may think fit in regard to the conduct of its business. And he may especially require any such corporation, joint stock company, or other association, to give a list of all contracts or transactions entered into within the twelve months preceding such requisition, in which it has sold any article or product, or carried any article or product within this state at a rate less than the ordinary market price, of [if] such article or product had been sold or carried by any other person than the party to such transac-



tion. And he may further require the reason for such distinction and the circumstances attending the same.

6302f Sec. 6. That every person, corporation, joint stock company, or other association engaged in business within the state, who shall enter into any contract, combination or conspiracy or who shall give any direction or authority to do any act, for the purpose of drawing out of business any other person engaged therein, or who for such purpose shall in the course of such business sell any article or product at less than its fair market value, or at a less price than it is accustomed to demand or receive therefor in any other place under like conditions; or who shall sell any article upon a condition, contract or undertaking that it shall not be sold again by the purchaser, or restrain such sale by the purchaser, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

6302g Sec. 7. That no corporation, joint stock company, or other association, shall engage in business within this state, a majority of whose stock is owned by or controlled or held in trust for any manufacturing or other corporation, which, in the course of its manufacture or production, conducts its business, or any part thereof, in a manner which would be prohibited by this act, if it were so conducted in the course of such business within this state.

6302h Sec. 8. That all the books of record and papers of every such corporation, joint stock company, or other association, engaged in business within this state, shall be subject to inspection by the attorney general of the state, or by any agent he may designate for that purpose, and such corporation joint stock company, or other association shall, at such times as he shall prescribe, make such further returns, verified as aforesaid, as shall be by him prescribed either by general regulations or by special direction.

6302i Sec. 9. That any president, director, treasurer, officer, corporator, copartner, associate, or agent of such corporation, joint stock company, or other association, who shall in its behalf do anything by this act prohibited to such corporation, joint stock company, or other association, or who shall support, vote for, aid and abet, or take part in doing such action by said corporation, joint stock company, or other association, or any instrumentality

thereof, shall be liable to the penalties by this act provided.

6302j Sec. 10. That no corporation, joint stock company, or other association, after the 30th day of June, 1906, which shall manufacture or produce any article, for sale or transportation within this state, which shall do any of the acts or things prohibited to be done by this act, shall engage in business within this state.

6302k Sec. 11. That any corporation, joint stock company, or other association that shall have been twice adjudged to have violated the provisions of this act by the final judgment of any court having jurisdiction of the question, in any civil suit or proceeding in which said corporation, joint stock company, or other association shall have been a party, who shall thereafter violate this act, or who shall fail to make the returns herein required at the times specified, shall no longer be allowed to engage in business within this state: Provided, That such prohibition shall only be enforced after such corporation, joint stock company, or other association shall have been enjoined against further engaging in such business, on an information or suit brought in a court of competent jurisdiction, by the attorney general in behalf of this state. It shall be the duty of the attorney general in such case, unless he shall be satisfied that such corporation, joint stock company, or other association has desisted and abstained and will in future desist and abstain from such violation, to enforce the provision by proceeding either by information or by indictment, as he may in his discretion think best. Any corporation, joint stock company, or other association which shall be charged with violating this act, and any president, director, treasurer, officer, or agent thereof, may be joined as a party in any proceeding, civil or criminal, to enforce this act. If, in the judgment of the attorney general, such corporation, joint stock company, or other association against which any civil proceeding may be instituted be one on which the public is so depending that the interruption of its business will cause serious public loss or inconvenience, he may, in his discretion, refrain from proceeding to obtain a decree which will absolutely prevent the continuance of such business, and may apply for a limited or conditional decree, or one to take effect at a future day, as the public interest shall seem to require. And if, in the judgment of the court before whom such

proceeding may be pending, the interruption of the business of the defendant corporation, joint stock company, or other association, will cause such serious public loss or inconvenience, the court may decline to enter an absolute decree enjoining it against proceeding with its business, and may enter a modified or conditional decree, or such decree to take effect at a future time, as justice shall require. The court may also, in its discretion, enjoin such officers or agents or servants of such corporation, joint stock company, or other association from continuing its service, and enjoin any such corporation, joint stock company, or other association from continuing their employment therein, as the case shall seem to require.<sup>1</sup>

6302l Sec. 12. That any corporation, joint stock company, or other association, and any president, director, treasurer, officer, corporator, copartner, associate, or agent thereof who shall in its behalf, after the 30th day of June, in the year 1906, engage in such business in violation of this act, shall for each offense, in addition to such penalty for contempt, as the court in case of disobedience to its lawful order may impose, be punished by a fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court.

6302m Sec. 13. That every president, treasurer, general manager, agent or other person usually exercising the powers of such officers of any corporation, joint stock company, or other association, who has himself, in his behalf, violated, united to violate, or voted for or consented to the violation of any of the provisions of this act, shall thereafter be personally liable for all the debts and obligations of any such corporation, joint stock company, or other association, created while such person holds such office or agency, whether under the same or subsequent elections or appointments.

6302n Sec. 14. That it shall be unlawful for any person or persons to offer, grant, or give, or to solicit, accept, or receive, any rebate, concession, or service in respect of the transportation of any property within this state by any common carrier, whereby any such property shall, by any device whatever, be transported at a less rate than that named in the tariffs published and filed by such carrier, as is required by law or charged others for like serv-

<sup>1</sup> In action to restrain violation of act court cannot in first instance declare forfeiture of corporate charter. *State v. Omaha*, 75 Neb., 654.

ice. Every person who shall offer, grant, or give or solicit, accept or receive any such rebate, concession, or service shall be deemed guilty of a misdemeanor, and on conviction thereof, shall be punished by a fine of not less than five thousand dollars.

6302o Sec. 15. That if any joint stock company, corporation, or combination or any agent thereof, shall solicit, accept, or receive any such rebate, concession or service as is hereinbefore declared to be unlawful, it shall be unlawful thereafter to transport within this state any article owned or controlled by such company, corporation, or combination, or produced or manufactured by it, by whomsoever the same may be owned or controlled. If any such joint stock company, corporation, or combination, shall offer, grant, or give any special prices, inducements, or advantages for the sale of articles produced, manufactured, owned, or controlled by it to purchasers in any particular locality in order to restrict or destroy competition in that locality in the sale of such articles, it shall be unlawful thereafter to transport within this state any article owned or controlled by it, or produced or manufactured by it, by whomsoever the same may be owned or controlled. Provided, however, That the prohibition imposed under this section shall not apply to any article purchased bona fide before decree made in pursuance hereof against the joint stock company, corporation, or combination producing, manufacturing, or theretofore owning or controlling the same; and provided further, That even after decree any such article may be relieved from the prohibition imposed under this section, if the owner thereof shall show to the satisfaction of the court having jurisdiction of the matter, hereinafter provided, that such article was purchased bona fide, without notice, and within thirty days after the entry of such decree. Any transportation company, and any officer, agent, or representative thereof, knowingly concerned in the transportation of articles within this state, contrary to the prohibitions of this section, shall be punished by a fine of not less than five thousand dollars.

6302p Sec. 16. That the several courts of record of this state having equity jurisdiction are hereby invested with jurisdiction to prevent and restrain all violations of this act, and especially the offering, granting, giving, soliciting, accepting, or receiving any such rebate, concession, or service by any person or persons; and to prevent or

restrain any such joint stock company, corporation, or combination, who shall have solicited, accepted, or received any such rebate, concession, or service, or who shall have offered, granted, or given any special prices, inducements, or advantages in order to restrict or destroy competition in particular localities from engaging in commerce within this state. Such proceedings may be by way of petition setting forth the cause of action and praying that the acts hereby made unlawful shall be enjoined or otherwise prohibited. When the parties complained of shall be duly notified of such petition, the court shall proceed as soon as may be to the hearing and determination of the case, and upon such petition and before final decree the court may at any time make such temporary restraining order or prohibition as shall be deemed just. The court may retain jurisdiction of the cause after the decree, for the purpose of such subsequent modification of the same as may be made to appear equitable and just in the premises.

6302q Sec. 17. That whenever it shall appear to the court before which any civil proceedings under this act shall be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be summoned, whether they reside in the county where the court is held or not, and subpoenas to that end may be served in any county by the sheriff thereof.

6302r Sec. 18. That any person who shall be injured in his business or property by any other person or persons by reason of anything forbidden or declared to be unlawful by this act, may sue therefor in any court of record in this state, in the county in which the defendant or defendants reside or are found, without respect to the amount in controversy, and shall recover threefold the damages by him sustained and the costs of suit, including a reasonable attorney's fee.

6302s Sec. 19. That the word "person" or "persons" as used in sections, one, three and five, of this act, shall be deemed to include all corporations, associations, combinations or concerns whatsoever.

6302t Sec. 20. That any suit in equity brought in any court of this state under this act, wherein the state is complainant, the attorney general may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be

immediately furnished by such clerk to the judge of the court in which the case is pending. Thereupon such case shall be given precedence over and in every way expedited, and be assigned for hearing at the earliest practicable day. An appeal from the final decree of the court will lie only to the Supreme Court and must be taken within sixty days from the entry thereof.

6302u Sec. 21. That, in all prosecutions, hearings, and proceedings under the provisions of this act, whether civil or criminal, no person shall be excused from attending and testifying, or from producing books, papers, contracts, agreements, and documents before the courts of this state, or in obedience to the subpoena of the same, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to criminate him or subject him to a penalty or forfeiture. Any person who shall neglect or refuse to make returns, attend and testify or answer any lawful requirement hereinbefore provided for, or produce books, papers, contracts, agreements, and documents, if in his custody, control, or power to do so, in obedience to the subpoenas of the court or lawful requirements of the attorney general, shall be deemed guilty of a misdemeanor, and upon conviction thereof by a court of competent jurisdiction shall be punished by a fine of not less than five hundred dollars nor more than five thousand dollars. That whoever knowingly swears to a return or report required by this act that is false in any material particular, or knowingly swears to an answer to any of the requirements of this act, that is false in any material particular, shall be deemed guilty of perjury and punished as provided by the laws of this state in reference to perjury. Whoever shall knowingly prepare, or cause to be prepared, a report, return or answer required by this act that is false, as aforesaid, shall be guilty of subornation of perjury and punished as provided by law.

6302v Sec. 22. That there is hereby appropriated out of any money in the treasury not otherwise appropriated, to be expended under the direction of the governor and attorney general of this state, the sum of Ten Thousand dollars for the enforcement of the provisions of this act in the employment of special counsel and agents by the governor or attorney general to conduct proceedings, suits and prosecutions under this act, in the courts of this state. It is hereby made the duty of the attorney general and

the county attorney of the state under direction of the attorney general to institute and prosecute such proceedings as may be necessary to carry into effect all of the provisions of this act. Provided, That no person shall be prosecuted or be subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he may testify or produce evidence, documentary or otherwise, in any proceedings, suit, or prosecution under this act: Provided further, that no person testifying shall be exempt from prosecution or punishment for perjury committed in so testifying.

## COURT DECISIONS.

*Downing v. Lewis*, 56 Neb., 386.

*Cleland v. Anderson*, 66 Neb., 252; 92 N. W., 306.

*Niagara Fire Ins. Co. v. Cornell*, 110 Fed., 816.

*State v. Omaha Elevator Co.*, 75 Neb., 637; 106 N. W., 979.





## **NEVADA.**

There are no anti-trust laws in Nevada.



## NEW HAMPSHIRE.

There is no specific statutory provision which prohibits the making of contracts and combinations for the purpose of controlling, limiting or regulating the production of any article or commodity, or the market price thereof, or to resist free competition in its production or sale.

But see, act July 5, 1867, which provides that two or more railroad corporations chartered by the legislature of this state constituting the whole or part of different lines of route for public travel and transportation between any two cities or towns, or between any city and town either within or without this state, forming rival and competing lines of route between such points, shall not be allowed to consolidate such roads or lines; and neither of said lines, or any road or roads composing the same, shall be run or operated by any such rival and competing line, or any road or roads, or portion thereof, under any business contract, lease, or other arrangement; but each and every railroad corporation so situated shall be run, managed, and operated separately by its own officers and agents, and be dependent for its connection with other roads, and the facilities and accommodations it shall afford the public for travel and transportation under fair and open competition, unless such lease, contract, or arrangement be first authorized by the legislature and approved by the government and council.

### COURT DECISIONS.

*Currier v. Concord R. Corp.*, 48 N. H., 321.

*Morrill v. Boston & M. R. Co.*, 55 N. H., 531.



## NEW JERSEY.

### STATUTES.

#### CHAPTER 13, LAWS OF 1913.

AN ACT To define trusts, and to provide for criminal penalties and punishment of corporations, firms and persons, and to promote free competition in commerce and all classes of business, both intrastate business and interstate business, engaged in and carried on by or through any corporation, firm or person.

1. A trust is a combination or agreement between corporations, firms or persons, any two or more of them, for the following purposes, and such trust is hereby declared to be illegal and indictable:

(1) To create or carry out restrictions in trade or to acquire a monopoly, either in intrastate or interstate business or commerce.

(2) To limit or reduce the production or increase the price of merchandise or of any commodity.

(3) To prevent competition in manufacturing, making, transporting, selling and purchasing of merchandise, produce or any commodity.

(4) To fix at any standard or figure, whereby its price to the public or consumer shall in any manner be controlled, any article or commodity or merchandise, produce or commerce intended for sale, use or consumption in this State or elsewhere.

(5) To make any agreement by which they directly or indirectly preclude a free and unrestricted competition among themselves, or any purchaser or consumers, in the sale or transportation of any article or commodity, either by pooling, withholding from the market or selling at a fixed price, or in any other manner by which the price might be affected.

(6) To make any secret oral agreement or arrive at an understanding without express agreement by which they directly or indirectly preclude a free and unrestricted

competition among themselves, or any purchaser or consumer, in the sale or transportation of any article, either by pooling, withholding from the market, or selling at a fixed price, or in any other manner by which the price might be affected.

2. Any person or corporation guilty of violating any of the provisions of this act shall be adjudged guilty of a misdemeanor, and punished accordingly on conviction.

3. Whenever an incorporated company shall be guilty of the violation of any of the provisions of this act, the offence shall be deemed to be also that of the individual directors, of such corporation, ordering or doing any of such prohibited acts and on conviction thereof they shall be punished accordingly.

4. In addition to the punishment which may be imposed for the misdemeanor the charter of the offending corporation may be revoked in appropriate proceedings by the Attorney-General of this State.

5. Nothing in this act contained shall operate to deprive any corporation of any right or power given or granted by section forty-nine of the act entitled "An act concerning corporations (Revision of 1896)," and the words "article" and "commodities" in this act are to be construed as synonymous with natural products, manufactured products, and goods, wares and merchandise.

6. If any part or parts of this act shall be held to be invalid or unconstitutional the validity of the other parts hereof shall not thereby be affected or impaired.

Approved February 19, 1913.

[Chapter 14, Laws of 1913.]

**A FURTHER SUPPLEMENT** To an act entitled "An act concerning corporations (Revision of 1896)," approved April twenty-first, one thousand eight hundred and ninety-six, for the purpose of amending section forty-nine thereof.

1. Section forty-nine of the act entitled "An act concerning corporations (Revision of 1896)," be and the same is hereby amended so as to read as follows:

49. (1). Any corporation formed under this act may purchase property, real and personal, and the stock of any corporation, necessary for its business, and issue stock to the amount of the value thereof in payment therefor, subject to the provisions hereinafter set forth, and the stock so issued shall be full paid stock, and not liable to any

further call; and said corporation may also issue stock for the amount it actually pays for labor performed.

*Provided*, that when property is purchased the purchasing corporation must receive in property or stock what the same is reasonably worth in money at a fair, bona fide valuation; *and provided further*, that no fictitious stock shall be issued; that no stock shall be issued for profits not yet earned, but only anticipated; *and provided further*, that when stock is issued on the basis of the stock of any other corporation it may purchase, no stock shall be issued thereon for an amount greater than the sum it actually pays for such stock in cash or its equivalent; *and provided further*, that the property purchased or the property owned by the corporation whose stock is purchased shall be cognate in character and use to the property used or contemplated to be used by the purchasing corporation in the direct conduct of its own proper business; and in all cases when stock is to be issued for property purchased, or for the stock of other corporations purchased, a statement in writing, signed by the directors of the purchasing company or by a majority of them, shall be filed in the office of the Secretary of State, showing what property has been purchased, and what stock of any other corporation has been purchased, and the amount actually paid therefor.

(2) That if any certificate made in pursuance of this act shall be false in any material representation, all the officers who sign the same, knowing it to be false, shall be guilty of misdemeanor, and the directors, officers and agents of the corporation, who wilfully participate in making it, shall be guilty of misdemeanor. *And provided further*, that any corporation which shall purchase the stock of any other corporation, or any property, for the purpose of restraining trade or commerce, or acquiring a monopoly, and the directors thereof participating therein, shall be guilty of a misdemeanor.

2. This act shall take effect immediately.

Approved February 19, 1913.

[Chapter 15, Laws of 1913.]

A FURTHER SUPPLEMENT To the act entitled "An act for the punishment of crimes (Revision of 1898)."

1. It shall be unlawful for any person, firm, corporation or association, engaged in the production, manufacture,

distribution or sale of any commodity of general use, or rendering any service to the public, to discriminate between different persons, firms, associations or corporations, or different sections, communities or cities of the State, by selling such commodity or rendering such service at a lower rate in one section, community or city than another, or at a different rate or price at a point away from that of production or manufacture as at the place of production or manufacture, after making due allowance for the difference, if any, in the grade, quality or quantity, and in the actual cost of transportation from the point of production or manufacture, if the effect or intent thereof is to establish or maintain a virtual monopoly, hindering competition, or restriction of trade.

2. Any person or corporation violating this act shall be guilty of a misdemeanor and on conviction thereof shall be punished accordingly.

3. This act shall take effect immediately.

Approved February 19, 1913.

[Chapter 16, Laws of 1913.]

AN ACT To amend an act entitled "A further supplement to the act entitled 'An act for the punishment of crimes,' approved June fourteenth, one thousand eight hundred and ninety-eight (Revision of 1898)," which supplement was approved June second, one thousand nine hundred and five.

1. Section one of the act entitled "A further supplement to the act entitled 'An act for the punishment of crimes,' approved June fourteenth, one thousand eight hundred and ninety-eight (Revision of 1898)," which supplement was approved June second, one thousand nine hundred and five, be and the same is hereby amended so as to read as follows:

1. Any person or persons, who shall organize, or incorporate, or procure to be organized, or incorporated, any corporation or body politic, under the laws of this State, with intent thereby to further, promote or conduct any object which is fraudulent or unlawful under the laws of this State, or which is intended to be used in restraint of trade or in acquiring a monopoly, when such corporation or body politic engages in interstate or intrastate commerce, shall be guilty of a misdemeanor.

2. Section two of the said supplement shall be and the same is hereby amended so as to read as follows:



2. Any person, or persons, being officers, directors, managers or employees of any corporation or body politic, incorporated under the laws of this State, who shall wilfully use, operate or control said corporation or body politic, or suffer the same to be used for the furtherance or promotion of any object fraudulent or unlawful under the laws of this State, or who shall use the same directly or indirectly in restraint of trade or in acquiring a monopoly, when such corporation or body politic engages in interstate or intrastate commerce, shall be guilty of a misdemeanor.

3. If any part or parts of this act shall be declared to be invalid or unconstitutional, the other parts hereof shall not thereby be affected or impaired.

4. This act shall take effect immediately.

Approved February 19, 1913.

[Chapter 17, Laws of 1913.]

AN ACT To amend section one hundred and nine of an act entitled "An act concerning corporations (Revision of 1896)," approved April twenty-first, one thousand eight hundred and ninety-six.

1. Section one hundred and nine of the act entitled "An act concerning corporations (Revision of 1896)," be and the same is hereby amended so as to read as follows:

109. When two or more corporations are merged or consolidated the consolidated corporation shall have power and authority to issue bonds or other obligations, negotiable or otherwise, and with or without coupons or interest certificates thereto attached, to an amount sufficient with its capital stock to provide for all the payments it will be required to make or obligations it will be required to assume, in order to effect such merger or consolidation; to secure the payment of which bonds or obligations it shall be lawful to mortgage its corporate franchises, rights, privileges and property, real, personal and mixed; *provided*, such bonds shall not bear a greater rate of interest than six per centum per annum; the consolidated corporation may issue capital stock, either common or preferred, or both, to such an amount as may be necessary, to the stockholders of such merging or consolidating corporation in exchange or payment for their original shares, in the manner and on the terms specified in the agreement of merger, or consolidation, which may fix the amount and provide for the issue of preferred

stock based on the property or stock of the merging or consolidating corporation conveyed to the consolidated corporations, as well as upon money capital paid in.

2. This act shall take effect immediately.

Approved February 19, 1913.

[Chapter 18, Laws 1913.]

AN ACT To amend an act entitled "An act concerning corporations" (Revision of 1896)," approved April twenty-first, eighteen hundred and ninety-six.

1. Section fifty-one of the act referred to in the title of this act is hereby amended to read as follows:

51. No corporation heretofore organized or hereafter to be organized under the provisions of this act to which this is an amendment, or the amendments thereof or supplements thereto, except as otherwise provided therein or thereby, shall hereafter purchase, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the shares of the corporate stock of any other corporation or corporations of this or any other State, or of any bonds, securities or other evidences of indebtedness created by any other corporation or corporations of this or any other State, nor as owner of such stock exercise any of the rights, powers and privileges of ownership, including the right to vote thereon. *Provided*, that nothing herein contained shall operate to prevent any corporation or corporations from acquiring the bonds, securities or other evidences of indebtedness created by any non-competing corporation in payment of any debt or debts due from any such non-competing corporation; nor to prevent any corporation or corporations created under the laws of this State from purchasing as a temporary investment out of its surplus earnings, reserved under the provisions of this act, as a working capital, bonds, securities or evidences of indebtedness created by any non-competing corporation or corporations of this or any other State, or from investing in like securities any funds held by it for the benefit of its employees or any funds held for insurance, any such non-competing corporation; nor to prevent any corporation or corporations created under the laws of this State from purchasing the bonds, securities or other evidences of indebtedness created by any corporation the stock of which may lawfully be purchased under the authority given by section forty-nine of the act entitled

"An act concerning corporations (Revision of 1896)"; *provided, also*, that nothing herein contained shall be held to affect or impair any right heretofore acquired in pursuance of the section hereby amended, by any corporation created under the laws of this State.

2. All acts and parts of acts inconsistent herewith are hereby repealed, and this act shall take effect immediately.

Approved February 19, 1913.

• [Chapter 19, Laws 1913.]

A FURTHER SUPPLEMENT To an act entitled "An act concerning corporations (Revision of 1896)," approved April twenty-first, one thousand eight hundred and ninety-six.

1. A merger of corporations made under the provisions of the act to which this act is a supplement, shall not in any manner impair the rights of any creditor of either of the merged corporations.

2. Before any merger of corporations can be made, the approval thereof in writing by the Board of Public Utility Commissioners of this State shall be obtained by said corporations and filed in the office of the Secretary of State, with the names of the directors of each of said corporations which assent to the merger.

3. Every corporation, and the directors thereof, procuring or assenting to such merger without complying with the provisions hereinbefore contained, shall be guilty of a misdemeanor and punishable accordingly.

4. This act shall take effect immediately.

Approved February 19, 1913.

#### COURT DECISIONS.

John P. Stockton, Attorney-General of New Jersey, at the Relation of John R. Miller et al. *v.* The American Tobacco Co. et al., 55 N. J. Eq., 352.

Trenton Potteries Co. *v.* Richard C. Oliphant et al. 56 N. J. Eq., 680; 43 At. Rep., 723.



## NEW MEXICO.

### STATUTES.

Every contract or combination between individuals, associations or corporations, having for its object or which shall operate to restrict trade or commerce or control the quantity, price or exchange of any article of manufacture or product of the soil or mine, is hereby declared to be illegal.

Every person, whether as individual or agent or officer or stockholders of any corporation or association, who shall make any such contract or engage in any such combination shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, nor less than one hundred dollars, and by imprisonment at hard labor not exceeding one year, or until such fine has been paid. (C. L. 1897, Sec. 1292.)

Every person who shall monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize any part of the trade or commerce of this territory, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding one thousand dollars, or by imprisonment not exceeding one year, or by both said punishments in the discretion of the court. (C. L. 1897, Sec. 1293.)

All contracts and agreements in violation of sections 1292 and 1293 shall be void, and the person or persons, corporation or corporations, association or associations who shall violate the provisions of either of said sections shall be civilly liable to the party injured for any and all damage occasioned by such violation, and any purchaser of any commodity from any individual, corporation or association transacting business in violation of this act shall not be liable for the payment for such commodity. (C. L. 1897, Sec. 1294, as amended by Laws of 1907, c. 18, p. 19.)



## NEW YORK.

### STATUTES.

No domestic stock corporation and no foreign corporation doing business in this state shall combine with any other corporation or person for the creation of a monopoly or the unlawful restraint of trade, or for the prevention of competition in any necessary of life. (S. C. L., Sec. 14.)

Every contract, agreement, arrangement or combination whereby a monopoly in the manufacture, production or sale in this state of any article or commodity of common use is or may be created, established or maintained, or whereby competition in this state in the supply or price of any such article or commodity is or may be restrained or prevented, or whereby for the purpose of creating, establishing or maintaining a monopoly within this state of the manufacture, production or sale of any such article or commodity, the free pursuit in this state of any lawful business, trade or occupation is or may be restricted or prevented, as hereby declared to be against public policy, illegal and void. (Cons. Laws, c. 20, Sec. 240.)

Every person or corporation, or any officer or agent thereof, who shall make or attempt to make or enter into any such contract, agreement, arrangement or combination, or who within this state shall do any act pursuant thereto, or in, toward or for the consummation thereof, wherever the same may have been made, is guilty of a misdemeanor, and on conviction thereof shall, if a natural person, be punished by a fine not exceeding five thousand dollars, or by imprisonment for not longer than one year, or by both such fine and imprisonment; and if a corporation, by a fine of not exceeding twenty thousand dollars. An indictment based on a violation of any of the provisions of this section must be found within two years after its commission. (Cons. Laws, c. 20, Sec. 341, as amended by L. 1910, c. 633.)

The attorney-general may bring an action in the name and in behalf of the people of the state against any person, trustee, director, manager or other officer or agent of a corporation, or against a corporation, foreign or domestic, to restrain and prevent the doing in this state of any act herein declared to be illegal, or any act in, toward or for the making or consummation of any contract, agreement, arrangement or combination herein prohibited, wherever the same may have been made. Id., Sec. 342.)

Whenever the attorney-general has determined to commence an action or proceeding under this article, he may present to any justice of the supreme court, before beginning such action or proceeding, an application in writing, for an order directing the persons mentioned in the application to appear before a justice of the supreme court, or a referee designated in such order, and answer such questions as may be put to them or to any of them, and produce such papers, documents and books concerning any alleged illegal contract, arrangement, agreement or combination in violation of this article; and it shall be the duty of the justice of the supreme court, to whom such application for the order is made, to grant such application. The application for such order made by the attorney-general may simply show, upon his information and belief, that the testimony of such person or persons is material and necessary. The provisions of the code of civil procedure, chapter nine, title three, article one, relating to the application for an order for the examination of witnesses before the commencement of an action and the method of proceeding on such examination shall not apply except as herein prescribed. The order shall be granted by the justice of the supreme court to whom the application has been made, with such preliminary injunction or stay as may appear to such justice to be proper and expedient, and shall specify the time when and place where the witnesses are required to appear, and such examination shall be held either in the city of Albany, or in the judicial district in which the witness resides, or in which the principal office, within this state, of the corporation affected is located. The justice or referee may adjourn such examination from time to time, and witnesses must attend accordingly. The testimony of each witness must be subscribed by him, and all must be filed in the office of the clerk of the county



in which such order for examination is filed. (Id., Sec. 343.)

The order for such examination must be signed by the justice making it, and the service of a copy thereof, with an indorsement by the attorney-general, signed by him, to the effect that the person named therein is required to appear and be examined at the time and place, and before the justice or referee specified in such indorsement, shall be sufficient notice for the attendance of witnesses. Such indorsement may contain a clause requiring such person to produce on such examination all books, papers and documents in his possession, or under his control, relating to the subject of such examination. The order shall be served upon the person named in the indorsement aforesaid, by showing him the original order, and delivering to and leaving with him, at the same time, a copy thereof indorsed as above provided, and by paying or tendering to him the fee allowed by law to witnesses subpoenaed to attend trials of civil actions in a court of record in this state. (Id., Sec. 344.)

No person shall be excused from answering any questions that may be put to him, or from producing any books, papers or documents, on the ground that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him, but no person shall be prosecuted in any criminal action or proceedings, or subjected to any penalty or forfeiture, for or on account of any transaction, matter or thing concerning which he may testify, or produce evidence, documentary or otherwise, before said justice or referee appointed in the order for his examination, or in obedience to the subpoena of the court, or referee acting under such order, or either of them or in any such case or proceeding. (Id., Sec. 345.)

A referee appointed as provided in this article possesses all the powers and is subject to all the duties of a referee appointed under section ten hundred and eighteen of the code of civil procedure, so far as practicable, and may punish for contempt a witness duly served as prescribed in this article for nonattendance or refusal to be sworn or to testify, or to produce books, papers and documents according to the direction of the indorsement aforesaid, in the same manner, and to the same extent as a referee appointed to hear, try and determine an issue of fact or of law. (Id., Sec. 346.)

If two or more persons conspire. \* \* \* \* 6. To commit any act injurious to \* \* \* \* trade or commerce \* \* \* \* is guilty of a misdemeanor. (Penal Law, Art. LIV, Sec. 580.)

No person shall be excused from attending and testifying, or producing any books, papers or other documents before any court, magistrate, or referee, upon any investigation, proceeding or trial, for a violation of any of the provisions of this article, upon the ground or for the reason that the testimony or evidence, documentary or otherwise, required of him may tend to convict him of a crime or subject him to a penalty or \*for forfeiture; but no person shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, and no testimony so given or produced shall be received against him upon any criminal investigation, proceeding or trial. (Penal Law, Sec. 584, added by L. 1910, c. 395.)

#### ACTS 1913.

Commissioner of agriculture may revoke milk dealer's license:

\* \* \* \* \*

3. Where there have been combinations to fix prices.

\* \* \* \* \*

(Sec. 57, Chap. 408, Acts 1913.)

Commissioner of agriculture may revoke license of commission merchants:

\* \* \* \* \*

6. Where there has been a combination or combinations to fix prices:

\* \* \* \* \*

(Sec. 286, Chap. 458, Acts 1913.)

#### COURT DECISIONS.

The People of the State of New York *v.* Carson J. Sheldon et al., 139 N. Y., 251.

Harvey F. Drake et al. *v.* Steverin Siebold, 81 Hun., 178.

The National Harrow Co. *v.* E. Bement & Sons, 21 N. Y. App. Div., 290.

In the Matter of the Application of the Attorney-General for an Order for the Examination of Witnesses

under the Provisions of Chapter 383 of the Laws of 1897.  
The Attorney-General, appellant; Robt M. Olyphant, respondent. 21 Misc. Rep., 101; 22 App. Div., 285; 155 N. Y., 441.

John G. Walsh and G. Wells Walsh *v.* John Dwight et al., 40 N. Y. App. Div., 513.

Diamond Match Co. *v.* Roeber, 106 N. Y., 473.

John L. Leslie *v.* Jacob Lorillard et al., 110 N. Y., 519.

John Good *v.* William S. Daland et al., 121 N. Y., 1.

The People of the State of New York *v.* The North River Sugar Refining Co., 121 N. Y., 582.

Strait et al. *v.* National Harrow Co. et al., 18 N. Y. Supp., 224.

De Witt Wire Cloth Co. *v.* New Jersey Wire Cloth Co. 9 Ry. and Corp. L. J., 314.

Sylvanus Judd *v.* Dennis Harrington, 139 N. Y., 105.

Ernest St. George Lough et al. *v.* A. Emilius Outerbridge et al., 143 N. Y., 271.

The People of the State of New York *v.* The Milk Exchange, 145 N. Y., 267.

Brooklyn Distilling Co. *v.* Standard Distilling Co., 120 App. D., 237.

Rourke *v.* Elk Drug Co., 75 App. D., 145.

Continental Securities Co. *v.* Interborough Rapid Transit Co., 165 Fed., 945.

Burrows *v.* Interborough Rapid Transit Co., 156 Fed., 389.

Attorney General *v.* Consolidated Gas. Co., 124 App. D., 401.

Alexandria Bay Steamboat Co. *v.* New York Central, etc., R. R. Co., 18 App. D., 527.

Rafferty *v.* Buffalo City Gas Co., 37 App. D., 618.

Watson *v.* Harlem & N. Y. Navigation Co., 52 How. Pr., 348.

Strauss *v.* American Publishers' Ass'n., 177 N. Y., 473.  
See opinion of U. S. Sup. Ct. rendered Dec. 1, 1913.

Park *v.* National Wholesale Druggists' Ass'n., 175 N. Y.; 62 L. R. A., 632.

People *v.* Duke, 19 Misc., 292; 44 N. Y. Suppl., 336.

Re Davies, 168 N. Y., 89; 56 L. R. A., 855.



## NORTH CAROLINA.

### STATUTES.

It shall be unlawful for any person or corporation to directly or indirectly be guilty of any of the acts and things specified in any of the subsections of this section.

(a) For any person, firm, corporation or association to make a sale or sales of any goods, wares, merchandise, articles or things of value whatsoever in North Carolina, whether directly or indirectly, or through any agent or employee, upon the condition that the purchaser thereof shall not deal in the goods, wares, merchandise, articles or things of value of a competitor or rival in the business of the person, firm, corporation or association making said sales. (b) For any person, firm, corporation or association to directly or indirectly wilfully destroy or injure, or undertake to destroy or injure, the business of any opponent or business rival in the state of North Carolina, by circulating false reports tending to damage the credit or character of said opponent or rival, or tending to interfere with the trade of said opponent or rival, with the purpose or intention of attempting to fix the price of anything of value when the competition is removed. (c) For any person, firm, corporation, or association to wilfully injure or destroy or undertake to injure or destroy the business of any rival or opponent, by lowering the price of any article or thing of value sold so low, or by raising the price of any article or thing of value bought so high, as to leave an unreasonable or inadequate profit. (d) For any person, firm, corporation, or association to injure or destroy or undertake to injure or destroy the business of any rival or opponent by lowering the price of any article or thing of value bought so low, or by raising the price of any article or thing of value bought so high, as to leave an unreasonable or inadequate profit, and with the purpose of increasing the profit on the business when such rival or opponent is

driven out of business or its business is injured. (e) For any person, firm, corporation, or association dealing in any thing of value within the State of North Carolina to give away, or sell, at a place where there is competition, such thing of value at a price lower than is charged by such person, firm, corporation, or association for the same thing at another place, where there is not sufficient reason for charging less at the one place than at the other, with the view of injuring the business of another. (f) For any person, firm, corporation, or association engaged in buying or selling any thing of value in North Carolina to make or have any agreement or understanding, express or implied, with any other person, firm, corporation or association not to buy or sell things of value within certain territorial limits within the state, with the intention of preventing competition in selling or to fix the price or prevent competition in buying of said things of value within these limits; provided, nothing herein shall be construed to prevent an agent from representing more than one principal. But nothing in this proviso shall be construed to authorize two or more principals to employ a common agent for the purpose of suppressing competition or lowering prices. (g) For any person, firm, corporation, or association, with intent to injure another, to conspire or agree with any other person, firm, corporation, or association to put down or keep down the price of any article produced in this state by the labor of others, which said article the said person, firm, corporation, or association intends to buy or is engaged in buying. (h) For any person, firm, corporation or association to solicit the trade, patronage, or good will of any person, firm, corporation, or association within the State of North Carolina, by the means of false statements as to his, their or its connection, alliance, or relationship to other persons, firms, corporations, or associations, or as to the ownership of his, their, or its business. (L. 1911, c. 167, Sec. 1.)

That if it shall be made to appear to the Attorney-General by satisfactory affidavit (which affidavit may be made up on information and belief, and when so made shall state the ground thereof) that any corporation is violating any of the provisions of this act within the State, it shall be the duty of the Attorney-General to apply to a judge of the Superior Court for an order to

cause such corporation, its officers and agents, or any of them, to appear before such judge at a time and place to be named by him, which time shall not be less than five days from the service of such order, to show cause why such corporation, its officers and agents, or any of them should not produce before such judge, at a time and place to be named, all the papers, books and records of such corporation; and if the judge shall be satisfied that such books, papers and records should be so produced he shall make an order requiring such corporation, its officers and agents, or any of them, to produce all or any of its papers, books and records, to be examined by the Attorney-General in the presence of such judge. Upon application by the attorney-general or any solicitor to a judge of the superior court, the judge may order any person or persons to appear before him to be examined in regard to any violations of this act, and persons so summoned shall be paid the usual fees and expenses allowed to witnesses. If any corporation, its officers or agents, or other person, shall fail to appear or shall fail to produce such papers, books or records as may be required, it or he shall be guilty of a misdemeanor, and it shall be the duty of the attorney-general to cause such corporation or person to be prosecuted therefor. When it shall be made to appear that the papers, books or records of any such corporation, or any of them, are without the limit of the state or that they cannot conveniently be produced before the judge for examination, as hereinbefore provided, such judge may issue a commission for the examination of such papers, books and records before a commissioner to be named by him. All examinations under this section shall be under oath, and false swearing shall constitute perjury, punishable as in other cases of perjury. Refusal to answer any question or questions asked on such examination, and required by the judge to be answered, shall constitute and be punishable as contempt. (Id., Sec. 2.)

That no person who is subpoenaed and required by the state to testify under the provisions of this act shall be prosecuted or convicted on account of matters disclosed by the testimony of such witnesses, nor shall the testimony of such witnesses be received from any court in any prosecution against such person. (Id., Sec. 3.)

That any corporation, either as agent or principal, violating any of the provisions of this act, shall be guilty of

a misdemeanor, and such corporation shall upon conviction be fined not less than one thousand dollars for each and every offense, and any person violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be fined not less than five hundred dollars or imprisoned within the discretion of the court. (Id., Sec. 6.)

That any person being either within or without the state, who encourages or wilfully allows or permits any agent or associates in business in this state to violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction shall be punished as provided in section 6 hereof. (Id., Sec. 7.)

That violation of any of the provisions of this act shall subject the offender to a penalty of one hundred dollars per day, which may be recorded for his own benefit by any citizen of the state. (Id., Sec. 7½.)

That where the things prohibited in section 1 of this act are continuous, then in such event after the first violation of any of the provisions hereof, the violations of the provisions of this act for each week during which such violations shall continue shall constitute a separate offense. (Id., Sec. 8.)

That the provisions of this act shall not be construed so as to repeal or restrict the common law doctrine preventing unlawful combination in trade and commerce, which are hereby re-enacted and declared to be in full force in this state, except as may be inconsistent with the other provisions of this act. (Id., Sec. 9.)

That it shall be competent to charge any or all of the offenses mentioned in section one of this act in a single bill of indictment in separate counts. Exclusive original jurisdiction of all violations of this act shall be in the superior courts of this state, anything in this act establishing a recorder's court to the contrary notwithstanding. (Id., Sec. 10.)

#### ACT 1913.

AN ACT To declare illegal trusts and combinations in restraint of trade.

Contracts,  
combinations  
and conspira-  
cies declared  
illegal.

SECTION 1. That every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce in the State of North Carolina is



hereby declared to be illegal. Every person or corporation who shall make any such contract expressly or shall knowingly be a party thereto by implication, or who shall engage in any such combination or conspiracy, shall be guilty of a misdemeanor, and upon conviction thereof such person shall be fined or imprisoned or both in the discretion of the court, whether such person entered into such contract individually or as an agent representing a corporation, and such corporation shall be fined in the discretion of the court not less than one thousand dollars.

Parties to contracts guilty of misdemeanor.

Punishment as to persons.

Punishment as to corporations.

SEC. 2. That any act, contract, combination in the form of trust, and conspiracies in restraint of trade or commerce which violates the principles of the common law is hereby declared to be in violation of section one of this act.

Conduct violating principles of common law forbidden.

SEC. 3. That all contracts, combinations in the form of trust, and conspiracies in restraint of trade or commerce prohibited in sections one and two of this act, are hereby declared to be unreasonable and illegal, unless the persons entering into such contract, combination in the form of trust, or conspiracy in restraint of trade or commerce can show affirmatively upon an indictment or civil action for violation of sections one and two of this act that such contract, combination in the form of trust, conspiracy in restraint of trade or commerce does not injure the business of any competitor, or prevent any one from becoming a competitor because his or its business will be unfairly injured by reason of such contract, combination in the form of trust, or conspiracy in restraint of trade or commerce.

Contracts, combinations and conspiracies declared unreasonable and illegal.

Burden of proof on defendant.

SEC. 4. That no contract or agreement hereafter made, limiting the rights of any person to do business anywhere in the State of North Carolina shall be enforceable unless such agreement is in writing duly signed by the party who agrees not to enter into any such business within such territory: *Provided*, nothing herein shall be construed to legalize any contract or agreement not to enter into business in the State of North Carolina, or at any point in the State of North Carolina, which contract is now illegal, or which contract is made illegal by any other section of this act.

Contracts not enforceable unless executed in writing.

Proviso: contracts not legalized.

SEC. 5. That in addition to the matters and things hereinbefore declared to be illegal, the following acts are declared to be unlawful, that is, for any person, firm, corporation, or association to directly or indirectly do or

Further declaration of unlawful acts.

have any contract, express or knowingly implied, to do, any of the acts or things specified in any of the subsections of this section.

Agreement or conspiracy to reduce prices.

(a) To agree or conspire with any other person, firm, corporation or association to put down or keep down the price of any article produced in this State by the labor of others, which said article said person, firm, corporation or association intends, plans or desires to buy.

Sales made on condition that purchaser shall not deal with rival.

(b) To make a sale or sales of any goods, wares, merchandise, articles or things of value whatsoever in North Carolina, whether directly or indirectly, or through any agent or employee, upon the condition that the purchaser thereof shall not deal in the goods, wares, merchandise, articles or things of value of a competitor or rival in the business of the person, firm, corporation or association making said sales.

Injuring or attempt to injure rival, with intent to fix prices free from competition.

(c) To willfully destroy or injure, or undertake to destroy or injure, the business of any opponent or business rival in the State of North Carolina with the purpose or intention of attempting to fix the price of anything of value when the competition is removed.

Buying or selling with intent to destroy or injure business of rival by affecting prices with intent of increasing profit by change of prices after such destruction and injury.

(d) Who directly or indirectly buys or sells within the State, through himself or itself, or through any agent of any kind or as agent or principal, or together with or through any allied, subsidiary or dependent person, firm, corporation or association, any article or thing of value which is sold or bought in the State to injure or destroy or undertake to injure or destroy the business of any rival or opponent, by lowering the price of any article or thing of value sold, so low, or by raising the price of any article or thing of value bought, so high as to leave an unreasonable or inadequate profit for a time, with the purpose of increasing the profit on the business when such rival or opponent is driven out of business, or his, their or its business is injured.

Unreasonable profit.

Variance of prices between localities with intent to injure business of another.

(e) Who deals in any thing of value within the State of North Carolina, to give away or sell, at a place where there is competition, such thing of value at a price lower than is charged by such person, firm, corporation or association, for the same thing at another place, where there is not good and sufficient reason, on account of transportation or the expense of doing business, for charging less at the one place than at the other, with the view of injuring the business of another.

(f) Who is engaged in buying or selling any thing of value in North Carolina, to make or have any agreement or understanding, express or implied, with any other person, firm, corporation or association, not to buy or sell said things of value within certain territorial limits within the State, with intention of preventing competition in selling or to fix the price or prevent competition in buying of said things of value within these limits: *Provided*, nothing herein shall be construed to prevent an agent from representing more than one principal. But nothing in this proviso shall be construed to authorize two or more principals to employ a common agent for the purpose of suppressing competition or lowering prices: *Provided, further*, that nothing herein shall be construed to prevent a person, firm or corporation from selling his or its business and good will to a competitor, and agreeing in writing not to enter the business in competition with the purchaser in a limited territory, as is now allowed under the common law: *Provided*, such agreement shall not violate the principles of the common law against trusts and shall not violate the provisions of this act.

Contracts not to do business in certain localities with intent to stifle competition in such localities

Proviso: agent representing more than one principal.

Proviso: sale of business and good will.

Proviso: condition of sale of good will must not violate common law or this act.

That any corporation, either as agent or principal, violating any of the provisions of this section shall be guilty of a misdemeanor, and such corporation shall upon conviction be fined not less than one thousand dollars for each and every offense, and any person, whether acting for himself, or as officer of any corporation or as agent of any corporation or person violating any of the provisions of this act shall be guilty of a misdemeanor and upon conviction shall be fined or imprisoned, or both, in the discretion of the court.

Corporation guilty of misdemeanor.

Punishment.

Person guilty of misdemeanor.

Punishment.

SEC. 6. That any person, being either within or without the State, who encourages or willfully allows or permits any agent or associates in business in this State to violate any of the provisions of this act, shall be guilty of a misdemeanor, and upon conviction shall be punished as provided in section five hereof.

Person encouraging, allowing or permitting violation of act guilty of misdemeanor.

Punishment.

SEC. 7. That where the things prohibited in this act are continuous, then in such event, after the first violation of any of the provisions hereof, each week that the violation of such provision shall continue shall be a separate offense.

Prohibition continuous.

Separate offenses.

SEC. 8. That the Attorney-General of the State of North Carolina shall have the power, and it shall be his

Attorney-general to examine affairs of corporations.

duty, to investigate, from time to time, the affairs of all corporations doing business in this State, which are or may be embraced within the meaning of the statutes of this State defining and denouncing trusts and combinations against trade and commerce, or which he shall be of opinion are so embraced, and all other corporations in North Carolina doing business in violation of law; and all other corporations of every character engaged in business in this State of transporting property or passengers, or transmitting messages and all other public service corporations of any kind or nature whatever which are doing business in the State for hire, with a view of ascertaining whether the law or any rule of the North Carolina Corporation Commission is being or has been violated by any such corporation, officers or agents or employees thereof, and if so, in what respect, with the purpose of acquiring such information as may be necessary to enable him to prosecute any such corporation, its agents, officers and employees for crime, or prosecute civil actions against them if he discovers they are liable and should be prosecuted.

Powers of attorney-general in making investigations.

SEC. 9. That to this end the Attorney-General shall have power, at any and all times, to require the officers, agents or employees of any such corporation, and all other persons having knowledge with respect to the matters and affairs of such corporations, to submit themselves to examination by him, and produce for his inspection any of the books and papers of any such corporations, or which are in any way connected with the business thereof; and the Attorney-General is hereby given the right to administer oath to any person whom he may desire to examine. He shall also, if it may become necessary, have a right to apply to any judge of the Supreme or Superior Court, after five days notice of such application, for an order on any such person or corporation he may desire to examine to appear and subject himself or itself to such examination, and disobedience of such order shall constitute contempt, and shall be punishable as in other cases of disobedience of a proper order of such judge: *Provided*, that no person so examined shall be subject to indictment, prosecution, punishment or penalty by reason or on account of anything disclosed by him upon such examination, and full immunity to prosecution and punishment by reason or on account of anything so disclosed is hereby extended to all persons so examined.

Right to administer oaths.

Application for order of discovery.

Disobedience of order contempt of court and punishable as such.

Proviso: immunity to witnesses.

SEC. 10. That any corporation unlawfully refusing or willfully neglecting to furnish the information required by this act when it is demanded as herein provided shall be guilty of a misdemeanor and fined not less than one thousand dollars: *Provided*, that if any corporation shall in writing notify the Attorney-General that it objects to the time or place designated by him for the examination or inspection provided for in the ninth section hereof, it shall be his duty to apply to a judge of the Supreme or Superior Court who shall fix an appropriate time and place for such examination or inspection, and such corporation shall, in such event, be guilty under this section, only in the event of its failure, refusal or neglect to appear at the time and place so fixed by said judge and furnish the information required by this act. False swearing by any person examined under the provisions of this act shall constitute perjury, and the person guilty of it shall be punishable as in other cases of perjury.

Refusal or neglect of corporation to furnish information misdemeanor.

Punishment.

Proviso: time and place for examination or inspection of corporation fixed by order of court,

Corporation guilty on failure, refusal or neglect to appear and furnish information.

False swearing perjury.

Punishment,

SEC. 11. If it shall become necessary to do so, the Attorney-General may prosecute civil actions in the name of the State on relation of the Attorney-General to obtain a mandatory order to carry out the provisions of this act, and the venue shall be in any county as selected by the Attorney-General.

Remedy by mandamus.

Venue.

SEC. 12. That it shall be the duty of the Attorney-General, upon his ascertaining that the laws have been violated by any trust or public service corporation, so as to render it liable to prosecution in a civil action, to prosecute such action in the name of the State, or any officer or department thereof, as provided by law, or in the name of the State on relation of the Attorney-General, and to prosecute all officers or agents or employees of such corporations, whenever in his opinion the interests of the public require it.

Attorney-general to prosecute actions.

Prosecution of persons.

SEC. 13. That the Attorney-General in carrying out the provisions of this act shall have a right to send bills of indictment before any grand jury in any county in which it is alleged this act has been violated or in any adjoining county, and may take charge of and prosecute all cases coming within the purview of this act, and shall have the power to call to his assistance in the performance of any of these duties of his office which he may assign to them any of the solicitors in the State, who shall, upon being so required to do so by the Attorney-General, send bills of indictment and assist him in the performance of the duties

Attorney-general may send bills of indictment.

May take charge of prosecution.

Assistance of solicitor.

**Proviso :** of his office: *Provided*, that the State shall pay the actual payments to solicitors. and necessary expenses of the solicitor incurred while performing such duties and not over one hundred dollars as an extra fee when the expense account is approved by the Attorney-General and Governor, and duly audited, and the amount of the fee is fixed by them.

**Expense of enforcing act.** That the necessary expenses incident to carrying out the provisions of this act shall, when approved by the Governor and audited, be paid out of any money in the state treasury not otherwise appropriated.

**Right of action for injury to business.** SEC. 14. That if the business of any person, firm or corporation shall be broken up, destroyed or injured by reason of any act or thing done by any other person, firm or corporation in violation of the provisions of this act, such person, firm or corporation so injured shall have a right of action on account of such injury done, and if damages are assessed by a jury in such case judgment shall be rendered in favor of the plaintiff and against the defendant for treble the amount fixed by the verdict.

**Treble damages.** SEC. 15. That nothing herein shall be construed to repeal the present law so far as it applies to acts committed prior to the ratification of this act. With this exception all laws and clauses of laws in conflict with this act are repealed as of the date when this act becomes effective.

**Acts heretofore committed.**

In the General Assembly read three times and ratified this the 3d day of March, 1913.

#### COURT DECISIONS.

Thrift *v.* Elizabeth City, 122 N. C., 31; 44 L. R. A., 427.  
 State *v.* Biggs, 133 N. C., 729; 64 L. R. A., 139.  
 St. George *v.* Hardie, 147 N. C., 88.

## NORTH DAKOTA.

### CONSTITUTION.

ART. VII, SEC. 146. Any combination between individuals, corporations, associations, or either, having for its object the effect of controlling of the price of any product of the soil or any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and hereby declared unlawful and against public policy; and any and all franchises heretofore granted or extended, or that may hereafter be granted or extended in this state, whenever the owner or owners thereof violate this article, shall be deemed annulled and become void.

### STATUTES.

#### ANTI-TRUST LAW OF 1907.

SECTION 1. Any corporation organized under the laws of this state or any other state or country for transacting or conducting any kind of business in this state, or any partnership, association or individual creating, entering into or becoming a member of, or a party to, any pool, trust, agreement, contract, combination, confederation or individual, to regulate or fix the price of any article of merchandise, commodity or property, or to fix or limit the amount or quantity of any article, property, merchandise or commodity to be manufactured, mined, produced, exchanged or sold in this state, shall be guilty of a misdemeanor.

SEC. 2. A pool or a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade.
2. To limit or reduce the production, or increase or reduce the price, of property, merchandise or commodities.

3. To fix at any standard or figure, whereby its price to the public shall be in any manner controlled or established, upon any property, article or commodity of merchandise, produce or manufacture intended for sale, use or consumption in this state; or to establish any pretended agency whereby the sale of any such property, article or commodity shall be covered up or made to appear to be for the original vendor, or a like purpose or purposes.

4. To make or enter into or carry out any contract, obligation or agreement of any kind or description by which they shall bind or have bound themselves not to sell, dispose of or transport any property, commodity or article of trade, use, merchandise, commerce or consumption below a common standard figure, or card price list, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any property, article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or transportation of any article or commodity that its price might in any manner be affected.

SEC. 3. Every corporation whether organized under the laws of this state or any other state or country, doing business in this state, and every person, partnership or association of individuals so doing business, violating any of the provisions of this chapter, is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than five thousand dollars.

SEC. 4. Every person who, as president, manager, director, stockholder, receiver or agent or other employee of any corporation, on behalf of such corporation mentioned in the last section, or as a member of any partnership or association of individuals, violates any of the provisions of this chapter, upon conviction shall be fined not to exceed two thousand dollars, or imprisoned in the county jail not to exceed one year, and, in the discretion of the court, a sentence of both fine and imprisonment may be imposed.



SEC. 5. Every domestic or foreign corporation authorized to do business in this state, which shall have been found guilty in any court of competent jurisdiction of violating any of the provisions of this chapter, is hereby denied the right of any prohibited from doing business in this state, and the charter, articles of incorporation or authority granted, authorizing such corporation to do business in this state, shall cease and become void; and it shall become the duty of the secretary of state, upon the filing in his office of a certified copy of such judgment, to immediately cancel the authorization or charter of such corporation and give such corporation written notice of such cancellation.

SEC. 6. In any information or indictment for any offense named in this chapter it is sufficient to state the purposes of the trust or combination and that the accused is a member of, acted with or in pursuance to it, without giving its name or description, or how or where it was created.

SEC. 7. In prosecutions under this chapter it shall be sufficient to prove that a trust or combination exists and that the defendant belonging to it or acted for or in connection with it, without proving all the members belonging to it or proving or producing any articles of agreement or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all, and proof that any person has been acting as agent of any defendant in transacting the business of such defendant in this state, was, while agent of such defendant and in the name, behalf or interest of such defendant, violated any of the provisions of this chapter, shall constitute prima facie proof that the same was the act of such defendant.

SEC. 8. Any contract or agreement in violation of the provisions of this chapter shall be absolutely void and not enforceable either in law or in equity.

SEC. 9. No purchaser of any property, article or other commodity from any individual, company, association or individuals or corporation transacting business contrary to any provisions of the preceding sections of this chapter, shall be liable for the price or payment of such property, article or commodity, and may plead this chapter as a defense in any suit for such price or payment.

SEC. 10. Whenever any proceeding shall have been commenced in any court of competent jurisdiction in

this state by the attorney-general against any corporation or corporations, individual or individuals, or association of individuals, co-partnership or joint stock company or other association, under any of the provisions of this chapter, and the attorney-general desires to take the testimony of any officer, director, agent or employee of any such corporation, individual, co-partnership, joint stock company or association proceeded against, or any member or employee thereof in any court in which said action may be pending, or before any person duly authorized by any court to take testimony in any such action, and such individual or individuals whose testimony is desired are without the jurisdiction of the courts of this state or reside without the state of North Dakota, or cannot be found within this state, then in such case, the attorney-general may file in the court in which said action is pending, in term time or in vacation, or with any judge thereof or with any person duly authorized to take the testimony in such action, an application in writing stating therein the name or names of the persons or individuals whose testimony he desires to take, and the time when and place where he desires the said person to appear and testify, and thereupon the court in which said action is pending, or a judge thereof, or the person before whom testimony is being taken, shall immediately issue a notice in writing, directed to the attorney or attorneys of record, if any, in said cause appearing for any such defendant or defendants or to any defendant, agent, officer or employee of any such defendant or defendants who are parties to said action, notifying said defendant, attorney or attorneys of record for such defendant or other officer, agent or employee of any such party defendant that the testimony of the person or persons named in the application of the attorney-general is desired and requiring such persons named to appear at the time and place therein stated then and there to testify in said action, and requiring said defendant, attorney or attorneys of record for any such defendant or such officer, agent or employee of any such defendant to whom said notice is delivered, or upon whom the same is served, to have said officer, agent, employee or representative of such defendant or defendants named in such notice whose evidence it is desired to take, at the place named in said notice and at the time therein fixed, then and there to testify; provided, however, that such notice

shall always allow the persons required to testify such reasonable time for travel to the designated point where such testimony is required to be given as will, in the judgment of the court, be sufficient to permit the person cited to appear, to be present at the time and place designated in such notice; provided also, that such time shall in no case be less than ten days from the service of such notice. Such notice may be served by any person authorized by law to serve a subpoena.

SEC. 11. Whenever any defendant, attorney or attorneys of record, or any agent, officer or employee of any such party defendant shall have been notified as provided in the preceding section to require any officer, agent, director or other employee to attend before any court or other person authorized to take the testimony as therein provided, shall fail to appear and testify or fail to produce such books, papers or documents as he or they shall have been ordered to produce by the court or the person authorized to take said evidence, then it shall be the duty of the court before whom said action is pending, upon motion of the attorney-general, to strike out the answer, motion, reply, demurrer or other pleading then or thereafter filed in said action or proceeding by any such party defendant whose officer, agent, director or employee has neglected or failed to attend or testify or to produce any such book, papers or documents as he or they shall have been ordered to produce in said action by the court or the person authorized to take such testimony, and said court, upon motion of the attorney-general, shall render judgment by default against any such defendant. In case any officer, agent, employee, director or other representative or any such defendant as hereinbefore mentioned, who shall reside in or be found within this state, shall be subpoenaed to appear and testify in any suit or proceeding brought under the provisions of this chapter, or to produce such papers, books and documents as shall have been ordered produced by the court, or other person authorized to take such testimony, then the answer, motion, demurrer or other pleading then or thereafter filed by any such defendant shall, on motion of the attorney-general, be stricken out and judgment in said cause rendered as on default.

SEC. 12. The court in which any action or suit is brought under the provisions of this chapter shall, upon the relation of the attorney-general made either at

the time of the beginning of said suit or at any time thereafter during its pendency, issue an injunction enjoining any defendant, agents or other employees of any such defendant from selling or assigning or in any other manner disposing of or secreting any of the property or assets of such defendant then situated in this state during the pendency of such suit and enjoining the removal of any such assets or other property from the jurisdiction of this state or the courts thereof; provided, however, that such injunction shall, on motion of any such defendant, be dissolved upon the filing of a bond in an amount to be approved by the court, conditioned that the defendant shall pay any judgment, fine and costs finally entered against the defendant in the action or proceeding in which such bond is filed.

SEC. 13. Judgment for fine and costs shall be entered in the same manner as in civil cases, and shall be enforced in like manner.

SEC. 14. In addition to the penalties and costs provided for in this chapter, the court shall allow in any action brought under the provisions of this chapter, a reasonable attorney's fee, to be assessed as part of the costs of said action, which attorney's fee, so assessed shall go to the attorney-general or state's attorney who conducted the prosecution, and shall be retained by such attorney-general or state's attorney as additional compensation to that otherwise allowed by the laws of this state as such attorney-general's or state's attorney's salary. (L. 1907, c. 259.)

#### UNFAIR COMPETITION (AMENDED ACT MAR. 12, 1913).

1. Any person, firm, corporation, foreign or domestic, doing business in the state of North Dakota and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying or preventing competition, discriminate between different sections, communities or cities of this state by selling any such commodity at a lower rate or price in one section, community or city, or any portion thereof, than is charged for such commodity in any other section, community or city, after equalizing the distance from the point of manufacture, production or distribution and freight rates therefrom, or who shall wilfully, for the purpose of such

discrimination and unfair competition, refuse to sell any commodity in general use, and in the manufacture, production or distribution of which such person, firm or corporation may be engaged, to any other person, firm or corporation which may desire to purchase the same and who shall comply with all reasonable regulations of such person, firm or corporation and who shall tender payment therefor, shall be deemed guilty of a misdemeanor.

2. If any complaint is made to the secretary of state that any corporation chartered in this state, or authorized to do business therein, is or has been guilty of unfair discrimination within the terms of this act, it shall be the duty of such secretary to at once institute an inquiry as to such discrimination, giving the corporation complained of notice of such complaint and an opportunity to be heard, and if in the opinion of such secretary of state any corporation, foreign or domestic, shall have been guilty of any such unfair discrimination under the terms of this act, the said secretary shall so find and shall make a record of such finding upon the records in his office, and shall at once forfeit the charter of such corporation, if it be a domestic corporation, or if it be a foreign corporation he shall immediately revoke and forfeit its permit to do business in this state.

3. If, after the revocation of such charter in the case of a domestic corporation, or of its permit if it be a foreign corporation, any such corporation shall continue or attempt to do business within this state, it shall be the duty of the attorney-general of this state by a proper action commenced in the name of the state, to oust such corporation from any and all business of any kind or character within the state of North Dakota.

4. Any firm, person or corporation violating any of the provisions of this act shall, upon conviction thereof, forfeit to the state of North Dakota a sum not less than two hundred nor more than five hundred dollars for each and every violation of this act, said sum to be recovered by action commenced by the attorney-general in the name of the state of North Dakota, in any court of competent jurisdiction. All sums so collected shall be credited to the general school fund of this state.

5. Nothing in this act contained shall in any manner be construed as repealing or in any manner altering any

other act or part of act heretofore adopted by the legislature of this state, but the remedies herein provided shall be cumulative to all other remedies now existing. (L. 1907, c. 258.)

#### DISCRIMINATION.

1. Any person, firm, company, association or corporation, foreign or domestic, doing business in the state of North Dakota, and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally for the purpose of destroying the business of a competitor in any locality, discriminate between different sections, communities or cities of this state, by selling such commodity at a lower rate in one section, community or city than is charged for said commodity by said party in another section, community or city, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful.

2. Any person, firm, company, association or corporation violating any of the provisions of the preceding section, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same or any individual, found guilty of a violation thereof, shall be fined not less than five hundred dollars, nor more than five thousand dollars, or be imprisoned in the county jail not to exceed one year, or suffer both penalties.

3. All contracts or agreements made in violation of any of the provisions of the two preceding sections shall be void.

4. It shall be the duty of the county attorneys, in their counties, and the attorney-general, to enforce the provisions of the preceding sections of this act by appropriate actions in courts of competent jurisdiction.

5. If complaint shall be made to the secretary of state that any corporation authorized to do business in this state is guilty of unfair discrimination within the terms of this act, it shall be the duty of the secretary of state to refer the matter to the attorney-general, who may, if the facts justify it in his judgment, institute proceedings in the courts against such corporation.

6. If any corporation, foreign and domestic, authorized to do business in this state, is found guilty of unfair discrimination, such finding shall cause a forfeiture of all the privileges and rights conferred by the laws of this state upon corporations and shall bar its right to do business in this state.

7. If any corporation, having been found guilty of a violation of any of the provisions of this act, shall continue or attempt to do business in this state, it shall be the duty of the attorney-general by a proper action in the name of the state of North Dakota to enjoin such corporation from transacting all business of every kind and character in the state of North Dakota.

8. Nothing in this act shall be construed as repealing any other act, or part of act, but the remedies herein provided shall be cumulative to all other remedies provided by law. (L. 1907, c. 260.)

#### TRUSTS—UNFAIR COMPETITION.

[Chapter 287, acts of 1913.]

AN ACT To amend Sections 1, 2 and 4 of Chapter 258 of the Session Laws of 1907, Relating to Trade Discrimination and Unfair Competition.

*Be it Enacted by the Legislative Assembly of the State of North Dakota:*

§ 1. AMENDMENT.] That Section 1 of Chapter 258 of the Session Laws of 1907, be amended to read as follows:

§ 1. UNFAIR COMPETITION.] Any person, firm or corporation, foreign or domestic, doing business in the state of North Dakota and engaged in the production, manufacture, distribution, purchase or selling of milk, cream, butter fat, grain or any commodity in general use that shall, with the intention of creating a monopoly, or of destroying the business of a competitor, or of any regular established dealer, or to prevent competition of any person who in good faith intends and attempts to become such a dealer, discriminate between different sections, communities, towns or cities, or portions thereof, in this state, by purchasing at a higher or selling at a lower rate or price in one section, community, town or city or portion thereof, in this state, than is paid or charged by such person, firm or corporation for such milk, cream, butter fat, grain or commodity in general use in another

section, community, town or city, or portion thereof, in this state, after making due allowance for the difference, if any, in the actual cost of transportation of such commodities, shall be guilty of unfair discrimination.

§ 2. AMENDMENT.] That Section 2 of Chapter 258 of the Session Laws of 1907 be amended to read as follows:

§ 2. FORFEITURE OF CHARTER.] If complaint shall be made to the attorney general that any person, firm or corporation, is guilty of unfair discrimination, as defined by this Act, he shall investigate the matter complained of, and for that purpose may subpoena witnesses, administer oaths, take testimony and require the production of books or other documents belonging to such persons, firm or corporation, and if, in his opinion, sufficient grounds exist therefor, he shall prosecute an action in the name of the state of North Dakota, in the proper court, to annul the charter or revoke the permit or license of such person, firm or corporation, as the case may be.

§ 3. AMENDMENT.] That Section 4 of Chapter 258 of the Session Laws of 1907 be amended to read as follows:

§ 4. PENALTY.] Any person, firm or corporation convicted of unfair discrimination shall be fined in any sum not less than two hundred dollars nor more than three thousand dollars.

§ 5. EMERGENCY.] An emergency is hereby declared to exist, and this Act shall take effect immediately upon its passage and approval.

Approved March 12, 1913.



## OHIO.

### DEFINITIONS OF TERMS.

The word "person" or "persons" as used in this chapter includes corporations, partnerships and associations existing under or authorized by any state or territory of the United States, or a foreign country. (G. C. Sec. 6390.)

### TRUSTS DEFINED.

A trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons, for any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce.
2. To limit or reduce the production or increase, or reduce the price of merchandise or a commodity.
3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or a commodity.
4. To fix at a standard or figure, whereby its price to the public or consumer is in any manner controlled or established, an article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state.
5. To make, enter into, execute or carry out contracts, obligations or agreements of any kind or description, by which they bind or have bound themselves not to sell, dispose of or transport an article or commodity, or an article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of an article, commodity or transportation between them or themselves and others, so as directly or indirectly to preclude a free and unre-

stricted competition among themselves, purchasers or consumers in the sale or transportation of such article or commodity, or by which they agree to pool, combine or directly or indirectly unite any interests which they have connected with the sale or transportation of such article or commodity, that its price might in any manner be affected. Such trust as is defined herein is unlawful, against public policy and void. (G. C., Sec. 6391.)

#### OWNING TRUST CERTIFICATE OR ENTERING INTO COMBINATION.

It shall not be lawful for a person, partnership, association or corporation, or an agent thereof, to issue or to own trust certificates, or for a person, partnership, association or corporation, or an agent, officer or employe thereof, or a director or stockholder of a corporation, to enter into a combination, contract or agreement with any person or persons, corporation or corporations, or a stockholder or director thereof, the purpose and effect of which is to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of a trustee or trustees with the intent to limit or fix the price or lessen the production and sale of an article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of such article. (G. C., Sec. 6392.)

#### ILLEGAL CONTRACT.

A contract or agreement in violation of any provision of this chapter is void and not enforceable either in law or equity. (G. C., Sec. 6393.)

#### PROHIBITION AGAINST FOREIGN CORPORATIONS.

A foreign corporation or foreign association exercising any the powers, franchises or functions of a corporation in this state, violating any provision of this chapter shall not have the right of, and be prohibited from, doing any business in this state. The attorney-general shall enforce this provision by proceedings in quo warranto in the supreme court, or the court of appeals of the county in which the defendant resides or does business, or by injunction or otherwise. The secretary of state shall

revoke the certificate of such corporation or association theretofore authorized by him to do business in this state. (G. C., Sec. 6394 as amended by act of May 8, 1913.)

#### CIVIL PENALTY.

A person, firm, partnership, corporation or association violating any provision of this charter shall forfeit and pay the sum of fifty dollars for each day that such violation is committed or continued after due notice given by the attorney-general or a prosecuting attorney. Such sum may be recovered in the name of the state in any county where the offense is committed or where any of the offenders reside; and the attorney-general, or the prosecuting attorney of any county upon the order of the attorney-general, shall prosecute for the recovery thereof. When such action is prosecuted by the attorney-general against a corporation or association, he may begin it in the circuit court of the county in which the defendant resides or does business. (G. C., Sec. 6395.)

#### CRIMINAL PENALTY.

A violation of any or all of the provisions of this chapter is a conspiracy against trade, and a person engaged in such conspiracy or taking part therein, or aiding or advising in its commission, or, as principal, manager, director, agent, servant or employer, or in any other capacity, knowingly carrying out any of the stipulations, purposes, prices or rates, or furnishing any information to assist in carrying out such purposes, or orders thereunder, or in pursuance thereof, or in any manner violating a provision of this chapter, shall be fined not less than fifty dollars nor more than five thousand dollars or imprisoned not less than six months nor more than one year, or both. Provided, however, that when the violation of the provisions of this chapter consists of a combination to control the price or supply, or to prevent competition in the sale of bread, butter, eggs, flour, meat or vegetables or any one of said articles, the person or persons thus engaged shall upon conviction thereof be fined in any sum not less than five hundred dollars and be imprisoned in the penitentiary not less than one nor more than five years. Each day's violation of any of the provisions of this chapter shall constitute a separate offense. (G. C. 6396 as amended by act May 3, 1913.)

## LIABILITY FOR DAMAGES.

In addition to the civil and criminal penalties provided in this chapter, the person injured in his business or property by another person, or by a corporation, association or partnership, by reason of anything forbidden or declared to be unlawful in this chapter, may sue therefor in any court having jurisdiction thereof in the county where the defendant or his agent resides or is found, or where any service may be obtained, without respect to the amount in controversy, and recover two-fold the damages sustained by him and his costs of suit. When it appears to the court, before which a proceeding under this chapter is pending, that the ends of justice require other parties to be brought before such court, the court may cause them to be made parties defendant and summoned whether they reside in the county where such action is pending, or not. (G. C., Sec. 6397.)

## WHAT INDICTMENT SHALL CONTAIN.

In an indictment for an offense provided for in this chapter, it is sufficient to state the purpose or effects of the trust or combination, and that the accused is a member thereof, or acted with or in pursuance of it or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created. (G. C., Sec. 6398.)

## EVIDENCE.

In prosecutions under this chapter, it shall be sufficient to prove that a trust or combination as defined herein exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing an article of agreement, or a written instrument on which it may have been based; or that it was evidenced by a written instrument. The character of the trust or combination alleged may be established by proof of its general reputation as such. (G. C., Sec. 6399.)

## DUTY OF ATTORNEY-GENERAL AND PROSECUTING ATTORNEY.

The several courts of common pleas in the State are hereby invested the jurisdiction to restrain and enjoin violators of this chapter. For a violation of any pro-

vision of this chapter by a corporation or association mentioned herein, the attorney general, or the prosecuting attorney of the proper county, shall institute proper proceeding in a court of competent jurisdiction in any county in the state where such corporation or association exists, does business or has a domicile. When such suit is instituted by the attorney general in quo warranto, he may begin the same in the supreme court of the state or the court of appeals of Franklin county. When such suit is instituted by the attorney general to restrain and enjoin a violation of any provision of this chapter, he may begin the same in the court of common pleas of Franklin county. Such proceeding to restrain and enjoin such violation, or violations, shall be by way of petition setting forth the case, and praying that such violation shall be enjoined or otherwise prohibited.

Upon the filing of such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. In any action or proceeding in quo warranto by the attorney general or a prosecuting attorney against the corporation the court in which such action or proceeding is pending may, ancillary to such action or proceeding, restrain or enjoin the corporation and its officers and agents from continuing or committing during the pendency of the action the alleged act or acts by reason which the action is brought. When, in a proceeding quo warranto by the attorney general or any prosecuting attorney, any corporation incorporated under the laws of this state is, on final hearing, found guilty of violating any of the provisions of this act, the court may declare a forfeiture of all its rights, privileges, and franchises to the state and may order the incorporation dissolved and appoint a trustee or trustees to wind up its affairs, as is provided in other cases of quo warranto. (G. C. Sec. 6400 as amended act May 8, 1913.)

#### WITNESS NOT EXCUSED FROM TESTIFYING.

If a court of record or in vacation a judge thereof, in which is pending a civil, criminal or other action or proceeding brought or prosecuted by the attorney-general or a prosecuting attorney for the violation of any provision of this chapter, or an action or proceeding for a violation of a law, common or statute, against a conspiracy or con-

bination in restraint of trade, so orders, no person shall be excused from attending, testifying or producing books, papers, schedules, contracts, agreements or other documents in obedience to the subpoena or order of such court or a commissioner, referee or master appointed by such court to take testimony, or a notary public or other person authorized by the laws of this state to take depositions, when the order made by such court or judge includes a witness whose deposition is being taken before such notary public or other officer, for the reason that the testimony or evidence required of him may tend to criminate him or subject him to a penalty; but no person shall be prosecuted or subject to a penalty for or on account of a transaction, matter or thing concerning which he may so testify or produce evidence, documentary or otherwise, before such court, person or officer. (G. C., Sec. 6401.)

#### CUMULATIVE PROVISIONS.

The provisions of this chapter shall be cumulative of each other and of all other laws in any manner affecting them. G. C., Sec. 6402.)

See Nos. 71 and 74.

#### COURT DECISIONS.

*The Central Ohio Salt Co. v. Stephen H. Guthrie*, 35 O. St., 666.

*Emery et al. v. The Ohio Candle Co.*, 47 O. St., 320.

*State ex rel. v. Standard Oil Co.*, 49 O. St., 137.

*United States Telephone Co. v. Telephone Co.*, 32 O. C. C. 18; 13 N. S., 337.

*Gould v. Railway*, 21 Dec., 729.

*Freeman v. Miller*, 21 Dec., 766; 9 N. S., 26.

*Corn Products Refining Co. v. Roser-Runkle Co.*, 22 Dec., 663; 10 N. S., 596.

*Mannington v. Railway*, 16 O. F. D., 552; 8 O. L. R., 451.

*State v. Jacobs*, 7 Ohio N. P., 261.

*Kevil v. Standard Oil Co.*, 8 Ohio N. P., 311.

*Gage v. State*, 24 Ohio C. C., 724.

## OKLAHOMA.

### CONSTITUTION.

#### POWER TO HOLD STOCKS AND BONDS OF OTHER CORPORATIONS.

ART. IX, SEC. 41. No corporation chartered or licensed to do business in this state shall own, hold or control, in any manner whatever, the stock of any competitive corporation or corporations engaged in the same kind of business, in or out of the state, except such stock as may be pledged in good faith to secure bona-fide indebtedness acquired upon foreclosure, execution sale or otherwise for the satisfaction of debt. In all cases where any corporation acquires stock in any other corporation, as herein provided, it shall be required to dispose of the same within twelve months from the date of acquisition; and during the period of its ownership of such stock it shall have no right to participate in the control of such corporation, except when permitted by order of the corporation commission. No trust company, or bank or banking company, shall own, hold or control, in any manner whatever, the stock of any other trust company, or bank or banking company, except such stock as may be pledged in good faith to secure bona fide indebtedness, acquired upon foreclosure, execution sale or otherwise for the satisfaction of debt; and such stock shall be disposed of in the time and manner hereinbefore provided.

ART. II, SEC. 32. Perpetuities and monopolies are contrary to the genius of a free government, and shall never be allowed, nor shall the law of primogeniture or entailments ever be in force in this state.

ART. V, SEC. 44. The legislature shall define what is an unlawful combination, monopoly, trust, act or agreement, in restraint of trade, and enact laws to punish persons engaged in any unlawful combination, monopoly, trust, act or agreement in restraint of trade, or composing any such monopoly, trust or combination.

ART. IX, SEC. 45. Until otherwise provided by law, no person, firm, association or corporation engaged in the production, manufacture, distribution or sale of any commodity of general use, shall, for the purpose of creating a monopoly or destroying competition in trade, discriminate between different persons, associations or corporations, or different sections, communities or cities of the state, by selling such commodity at a lower rate in one section, community or city than in another, after making due allowance for the difference, if any, in the grade, quantity or quality, and in the actual cost of transportation from the point of production or manufacture.

#### STATUTES.

That every act, agreement, contract or combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce, within this state, which is against public policy, is hereby declared to be illegal. (Act of June 10, 1908, L. 1908, p. 750, Sec. 1.)

If the attorney general shall have sufficient evidence that the provisions of the constitution, or any law pursuant thereto, against the establishment or maintenance of any trust, monopoly or unreasonable restraint of trade, or any violation of this act, or any of its provisions, are about to be or have been violated, by any person, firm, corporation or association engaged in any quasi-public business, or having a virtual monopoly of any commodity or business with the intention or effect of destroying competition or restraining trade contrary to the provisions of this act, he may file information in the supreme court, and by proceeding as against nuisance, enjoin and restrain said combination or arrangement, or any of its members or by proceeding analogous to libel, cause any or all the personal property of said offending person, firm or corporation or association used or to be used in whole or in part in any transaction which in effect or intent hinders competition, or unreasonable restriction of trade, to be forfeited to the state in the discretion of the court, together with all the commodities in the possession or control of such offending corporation, person, firm or association, used or intended for such use in violation of the constitution or laws pursuant thereto, or this act; and may take both said proceedings.



Upon the filing of such petition, or at any time thereafter, the attorney general may apply for an injunction pending the action and the appointment of a receiver for any or all of the property of such person, firm, corporation or association. Upon such application, the court, or a majority of the judges thereof, if in vacation, is authorized to issue a restraining order pending the action enjoining the defendant or defendants from in any way changing the business, records, books, instruments, or property to them belonging, or by them used, directly or indirectly, and issue a rule to show cause why a receiver should not be appointed, and after notice of such rule shall have been served on the defendant or defendants, or any managing agent of said defendant or defendants within this state, and an opportunity to be heard having been given, said receiver may be appointed in the discretion of the court to take charge of the property of the defendant or defendants so notified. Such receiver shall preserve said property free from any illegal arrangement until determination of the litigation, and thereafter to dispose of the same according to law, or any other remedy may be applied, or both, to more effectually produce and consummate such preservation or forfeiture, or both; and said court shall be authorized by appointed master in chancery, or otherwise in his discretion, to receive evidence in any county in the state according to the rules of civil procedure, and make the findings of fact thereon for said court; and said master in chancery shall have compulsory process for witnesses, and the production of books and papers from any part of the state, and for this purpose the executive officers of the said court, or any of the district courts of the state, shall be empowered to serve mesne and final process; and the services of said master in chancery, or other person appointed by the court shall be paid for as costs by the losing parties in said cause, in an amount equal to the fees that would have been earned therein if a notary public had received said testimony, together with a sum of not exceeding ten dollars (\$10) per day, in the discretion of the court, and the actual expenses for each day that testimony is actually received; and testimony and evidence in such action may also be taken by deposition anywhere within or without this state, as in civil actions in the district court.

In the event of a violation of any order of the court therein, and a proceeding grows out of the same in the

nature of contempt, if the defendant demand a trial by jury, the court may transfer the said contempt proceedings to any district court of the state for trial by jury, and a verdict, but the judgment, if any, shall be rendered by said supreme court, and sentence, if proper, passed by it. This proceeding shall be in addition to, and cumulative as to any other provisions of the law applicable to the same situation; provided, that the appointment of such receiver may be stayed, or after appointment and possession taken the receiver shall be discharged, upon the defendant giving bond in an amount and with sureties to be approved by said court, or a justice thereof, conditioned for the payment of all damages and costs which may be assessed against the defendant in said proceeding in favor of the state, or any officer, or person. (Id., Sec. 2.)

Any person, firm, corporation or association, who shall be injured in his or their business or property, by any other person, firm, corporation or association, by reason of anything forbidden, or declared to be unlawful by this act, may sue therefor in the courts of this state, and shall receive three-fold the damages by him or them sustained, and the costs of suit, and a reasonable attorney's fee, to be fixed by the court. (Id., Sec. 3.)

Every foreign corporation, as well as any foreign association, exercising any of the powers, franchises or functions of a corporation in this state, violating any of the provisions of this act is hereby denied the right and prohibited from doing business in this state, and the secretary of state, upon the order of the corporation commission, or any competent court, made after due notice and in due course of law shall revoke the license of any such corporation or association heretofore authorized to do business in this state. (Id., Sec. 4.)

It shall be unlawful for any person, firm, corporation or association, engaged in the production, manufacture, distribution or sale of any commodity of general use, or rendering any service to the public to discriminate between different persons, firms, associations or corporations, or different sections, communities or cities of the state by selling such commodity or rendering such service at a lower rate in one section, community or city than another, or at the same rate or price at a point away from that of production or manufacture as at the place of production or manufacture, after making due allowance for

the difference, if any, in the grade, quantity or quality, and in the actual cost of transportation from the point of production or manufacture, if the effect or intent thereof is to establish, or maintain, a virtual monopoly hindering competition, or restriction of trade. (Id., Sec. 5.)

Any person who shall violate any of the provisions of this act, or take any part or aid or advise in the violation of any such provisions, or who shall, as officer, manager, director, agent, servant or employee, of any firm, corporation or association, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information, knowingly, to assist in carrying out such purposes, or in pursuance thereof, in violation of said provisions, shall be punished by a fine of not less than \$50 nor more than \$10,000, and by imprisonment not less than ten days nor more than ten years, at the discretion of the court; and each day's violation of the provisions, or any of them, of this act, shall constitute a separate offense. And any sum which might be assessed, as a fine by way of punishment for a crime as in this act provided may be recovered by the state as a penalty in civil action, in addition to, or irrespective of, the assessment and assessability of said fine, either before, or later, or simultaneously with the pendency of said criminal action. (Id., Sec. 6.)

In any indictment or information for any offense named in this act it is sufficient to state the purpose, or facts of the trust, monopoly, unlawful combination in restraint of trade or commerce, and that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purpose, without giving its name, or description, or stating how, when or where it was created. (Id., Sec. 7.)

It shall be the duty of the court before whom any proceeding under this act may be brought, upon the application of the attorney general, to cause to be issued by the clerk of said court subpoenas for such witnesses as may be named in the application and cause the same to be served by the sheriff of the county where or whither such subpoena is issued; and such witnesses shall be compelled to appear before such court or judge at the time and place set forth in the subpoena, and shall be compelled to testify as to any knowledge they may have of the violations of any of the provisions of this act; and any witness who fails or refuses to attend and testify shall be punished

as for contempt, as provided by law. Any person so subpoenaed and examined shall not be liable to criminal prosecution for any violation of this act about which he may testify; neither shall the evidence of any such witness be used against him in any criminal proceeding. The evidence of all the witnesses shall, at the option of the attorney general, be taken down, and shall be transcribed and placed in the hands of the attorney general and he shall be authorized to prosecute such violator or violators of this act as the testimony so taken shall disclose. Witnesses subpoenaed as provided in this act shall be compelled to attend from any county in the state. (Id., Sec. 8.)

It shall be the duty of the county attorneys of the several counties of this state, as well as the attorney general of the state, to prosecute all actions to enforce the criminal provisions of this act. (Id., Sec. 9.)

It shall be unlawful for any person, partnership, firm, association or corporation or joint stock company, or agent thereof, to issue or to own trust certificates, or for any person, firm, partnership, association, joint stock company or corporation agent, officer, employee or the directors or stockholders of any corporation, association or joint stock company, to enter into any combination, contract or agreement with any person or persons, corporation or associations, firm or firms, partnership or partnerships, or with any stockholder, director or officer, agent or employee of the same, the purpose or effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the conduct or operation of the same, or the output of manufactured product thereof, or the marketing of the same in the hands of any trust or trustees, holding corporation or association, firm or committee, with the intent or effect to limit or fix the price or lessen the production or sale of any product or article of commerce or the use or consumption of the same, or to prevent, restrict, limit or diminish the manufacture or output of any such article of commerce, use or consumption, and every person, firm, partnership, association, joint stock company or corporation, or any agent, employee, officer, or director of the same that shall enter into such combination, contract, management or agreement for the purpose aforesaid, shall be deemed and adjudged guilty of conspiracy in restraint of trade, and

punished as provided for in section 6 of this act, in so far as applicable; provided, this section shall not be construed to extend beyond the scope and meaning of section 1 of this act. (Id., Sec. 10.)

Every corporation who shall own, hold or control in any manner whatever, the stock of any competitive corporation or corporations engaged in the same kind of business in or out of the state, in violation of the Constitution and laws of this state, shall forfeit its charter or license to do business in this state, and shall be subject to a penalty of not less than one thousand dollars (\$1,000.00) nor more than ten thousand dollars (\$10,000.00), to be recovered at the suit of the state, in any court of competent jurisdiction. (Id., Sec. 11.)

Whenever any corporation created under the laws of this state, or any foreign corporation authorized to do business in this state, shall violate any law of this state, for the violation of which fines, penalties or forfeitures are provided, all property of such corporation within this state at the time of such violation, or which may hereafter come within the state, shall, by reason of such violation, become liable for such fine or penalties, and for all costs of suit, and of collection. The state of Oklahoma shall have a lien on all such property from the date that the suit shall be instituted by the attorney general in any court of competent jurisdiction within this state, for the purpose of forfeiting the charter or canceling the permit of such corporation, or for the recovery of such fines or penalties. The institution of such suit for the recovery of such fines, penalties or forfeitures shall constitute notice of such lien. (Id., Sec. 12.)

Whenever any business, by reason of its nature, extent or the existence of a virtual monopoly therein, is such that the public must use the same or its services, or the consideration by it given or taken or offered, or the commodities bought or sold therein or offered or taken by purchase or sale in such a manner as to make it of public consequence, or to affect the community at large as to supply, demand or price, or rate thereof, or said business is conducted in violation of the first section of this act, said business is a public business, and subject to be controlled by the state, by the corporation commission, or by an action in any district court of the state, as to all of its practices, prices, rates and charges. And it is hereby declared to be the duty of any person, firm or

corporation engaged in any public business to render its services and offer its commodities, or either, upon reasonable terms, without discrimination and adequately to the needs of the public, considering the facilities of said business. (Id., Sec. 13.)

In all prosecutions or proceedings under this act it shall be sufficient to prove that a trust, monopoly, combination in restraint of trade or commerce, existed without the period not barred by the statute of limitations, and was continued in any form into and during any portion of the period not so barred, and that defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article or agreement, or any written instrument on which it may have been based, or that it was evidenced by any written instrument at all. (Id., Sec. 14.)

Any violation of this act committed before its passage, and continued in any illegal form after its passage, is within its terms. (Id., Sec. 15.)

The remedies provided for by this act are applicable to all pending actions. (Id., Sec. 16.)

Nothing in this act shall abridge or alter any remedy or remedies now, or hereafter, existing either at common law or by statute, but the provisions of this act are in addition to such remedies. (Id., Sec. 17.)

#### [Chapter 114.]

#### MONOPOLIES—UNFAIR COMPETITION AND DISCRIMINATION.

AN ACT To define and prohibit unfair competition and discrimination, and to define the powers and duties of the Attorney General in regard thereto; and declaring an emergency.

#### "UNFAIR DISCRIMINATION"—DEFINITION.

SECTION 1. Any person, firm or corporation, foreign or domestic, doing business in the State of Oklahoma, and engaged in the production, manufacture or distribution of any commodity in general, that intentionally, for the purpose of destroying the competition of any regular, established dealer in such commodity, or to prevent the competition of any person who, in good faith, intends and attempts to become such dealer, shall discriminate

between different sections, communities or cities of this state by selling such commodity at a lower rate in one section, community or city, or any portion thereof, than such person, firm or corporation, foreign or domestic, charges for such commodity in another section, community or city, or that shall discriminate between different sections, communities or cities of this state by selling such commodity at a lower rate in one section, community or city, or any portion thereof, than such person, firm or corporation, foreign or domestic, charges for such commodity in another section, community or city after equalizing the distance from the point of production, manufacture or distribution and freight rates therefrom, shall be deemed guilty of unfair discrimination, which is hereby declared to be a misdemeanor.

INVESTIGATIONS—ACTIONS—REVOCATION OF CHARTERS AND PERMITS.

SEC. 2. If complaint shall be made to the Attorney General that any corporation is guilty of unfair discrimination, as defined by this act, he shall investigate such complaint and for that purpose he may subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and if in his opinion sufficient grounds exist therefor, he may administer oaths, take testimony, and require the production of books or other documents, and if in his opinion sufficient grounds exist therefor, he may prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit of such corporation, as the case may be, and to permanently enjoin such corporation from doing business in this state, and if in such action the court shall find that such corporation is guilty of unfair discrimination, as defined by this act, such court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this state.

VIOLATIONS OF ACT—PUNISHMENT.

SEC. 3. Any person, or the managing agent or agents of any firm or corporation violating the provisions of section one (1) of this act shall upon conviction thereof, be fined not less than one hundred (\$100.00) dollars, nor more than five hundred (\$500.00) dollars for each offense.

## "COMBINATION" OF CORPORATIONS—DEFINITION.

SEC. 4. Where two or more corporations engaged in the same lines of business shall have or may hereafter become associated together by the owning, holding or controlling of certificates of stock, or other interest, in more than one of such corporations by one of such corporations, or any stockholder thereof, the same shall be deemed, and is hereby declared to be, a "combination," and all corporations so linked together, and all auxiliary corporations and business plants owned or controlled by them, or either of them, directly or indirectly, are declared to be members of such combination.

## "UNFAIR COMPETITION"—DEFINITION—EXCEPTIONS.

SEC. 5. Raising or lowering by such combination, or any member thereof, in the immediate territory of a financially weaker competitor, the price of a commodity handled by such competitor or lowering the price charged for services rendered the public by such competitor, while at the same time the same combination, or some member thereof, is engaged in buying or selling a like commodity for a different and more advantageous price, or is charging a greater rate for like services rendered the public at another point within the State of Oklahoma, is hereby declared to be unfair and destructive competition and is hereby prohibited; and the doing of any act which, directly or indirectly, brings about a similar effect on such weaker competitor shall be a violation of this act; provided, a proper allowance shall be made for grade or quality of product and freight rate. Provided nothing herein contained shall prevent such combination, or any member thereof, from meeting any price, made by any one not connected in any way with, or influenced by, any member thereof, at any point within this state without being required to make such price generally, so long as such outside party maintains such price in good faith, but no longer, if such point be within the immediate territory of a financially weaker competitor.

## DAMAGES TO WEAKER COMPETITOR—LIABILITY OF "COMBINATION."

SEC. 6. Every such weaker competitor injured by reason of any of the acts herein prohibited in the foregoing section may recover, as damages, of the offending combination, or any of the offending members thereof, three



times the amount of actual damages sustained thereby, together with a reasonable attorney fee for collecting such damages. Lost profits may be recovered as damages, and lost profits may be ascertained by taking the difference in the price paid or received for a commodity or for services rendered the public in the territory of such weaker competitor and the price paid or received for a like commodity or like services rendered at any other point within this state by such combination, or any member thereof. Grade or quality of product and freight rate to be considered as in previous section. Suit for such damages and attorney fees may be brought in any court of competent jurisdiction in the county wherein such damage may be sustained.

ACT CUMULATIVE TO OTHER LEGAL REMEDIES.

SEC. 7. Nothing in this act shall be construed as repealing any other act, or part of an act, but the remedies herein provided shall be cumulative to all other remedies provided by law.

EMERGENCY.

SEC. 8. An emergency is hereby declared by reason whereof it is necessary for the immediate preservation of the public health and safety that this act take effect and be in force from and after its passage and approval.

Approved, March 29, 1913.

COURT DECISIONS.

*State v. Coyle*, 130 Pac., 316.

*Anderson v. Shawnee Compress Co.*, 17 Okla., 231; 15 L. R. A. N. S., 846.

*Territory v. Long Bell Lumber Co.*, 99 Pac., 911.



## **OREGON.**

**There are no anti-trust laws in Oregon.**

### **COURT DECISIONS.**

**White v. Holman (Or.) 74 Pac., 933.**

**Trusts in Oregon.**

**269**



## **PENNSYLVANIA.**

**There are no anti-trust laws in Pennsylvania.**

### **COURT DECISIONS.**

**The Morris Run Company *v.* The Barclay Coal Co.,**  
**68 Penn. St., 173.**

**Nester et al. *v.* Continental Brewing Co. et al., 161**  
**Penn., 473.**



## **RHODE ISLAND.**

There are no statutory provisions on anti-trust subjects.

### **COURT DECISIONS.**

Oakdale Mfg. Co. et al. *v.* Sebastian Garst, 18 R. I.,  
484.

Macauley Brothers *v.* Tierney, 19 R. I., 255.

State *v.* Eastern Coal Co., 29 R. I., 254.





## SOUTH CAROLINA.

### CONSTITUTION.

ART. IX, SEC. 13. The general assembly shall enact laws to prevent all trusts, combinations, contracts and agreements against the public welfare; and to prevent abuses, unjust discriminations and extortion in all charges of transporting and transmitting companies; and shall pass laws for the supervision and regulation of such companies by commission or otherwise, and shall provide adequate penalties, to the extent, if necessary for that purpose, of forfeiture of their franchises.

### STATUTES.

All arrangements, contracts, agreements, trusts or combinations between two or more persons as individuals, firms or corporation made with a view to lessen, or which tend to lessen, full and free competition in the importation or sale of articles imported into this state, or in the manufacture or sale of articles of domestic growth, or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations, designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such product or article, and all arrangements, contracts, trusts, syndicates, associations or combinations between two or more persons as individuals, firms, corporations, syndicates or associations, that may lessen or affect in any manner the full and free competition in any tariff, rates, tolls, premiums or prices, or seeks to control in any way or manner such tariffs, rates, tolls, premiums or prices in any branch of trade, business or commerce, are hereby declared to be against public policy, unlawful and void; and any violation of the provision hereof shall be deemed, and is hereby declared to be, destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy, or who shall, as prin-

principal, manager, director or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall, on conviction, be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than six months, or more than ten years, or, in the judgment of the court, by either such fine or such imprisonment. (Criminal Code, Sec. 212.)

Whenever complaint is made upon affidavit or affidavits showing a prima facie case of violation of the provisions of the preceding section by any corporation, domestic or foreign, it shall be the duty of the attorney-general to bring action against such domestic corporation to forfeit its charter, and for the purpose of such forfeiture he shall apply to any court of competent jurisdiction for an order restraining such offending corporation, and in cases where, in his discretion, it is necessary, for the immediate appointment of a receiver for such offending corporation, where such forfeiture affects a creditor or creditors of such offending corporation, and in case such violation shall be established the court shall adjudge the charter of such corporation to be forfeited, and such corporation shall be dissolved and its charter shall cease and determine; and in the case of such showing as to a foreign corporation an action shall be begun by the attorney-general in said court to determine the truth of such charge, and in case such charge shall be considered established the effect of the judgment of the court shall be to deny such corporation the recognition of its corporate existence in any court of law or equity in this state. But nothing in this section shall be construed to affect any right of action then existing against such corporation. (Criminal Code, Sec. 213.)

Any person or persons or corporation that may be injured or damaged by any such arrangement, contract, agreement, trust or combination described in section 212 may sue for and recover, in any court of competent jurisdiction in this state, of any person, persons or corporation operating such trust or combination, the full consideration or sum paid by him or them for any goods, wares, merchandise or articles the sale of which is controlled by such combination or trust. (Criminal Code, Sec. 214.)

Any and all persons may be compelled to testify in any action or prosecution under the three preceding sec-

tions; provided, that such testimony shall not be used in any other action or prosecution against such witness or witnesses, any such witness or witnesses shall forever be exempt from any prosecution for the act or acts concerning which he or they testify. (Criminal Code, Sec. 215.)

See also secs. 2840-7 of the Civil Code to same effect.

#### ANTI-TRUST ACT OF 1902.

SECTION 1. Be it enacted by the general assembly of the state of South Carolina: Any corporation organized under the laws of this or any other state or country, and transacting or conducting any kind of business in this state, or any partnership or individual, or other association of persons whatsoever, who shall create, enter into, become a member of or a party to any pool, trust, agreement, combination, confederation or understanding with any other corporation, partnership, individual or any other person or association of persons, to regulate or fix the price of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever, or to maintain said price when so regulated or fixed, or shall enter into, become a member of or a party to any pool, agreement, combination, contract, association or confederation to fix or limit the amount or quantity of any article of manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining, or any article or thing whatsoever, or the price or premium to be paid for insuring property against loss or damage by fire, lightning, storm, cyclone, tornado, or any other kind of policy issued by any corporation, partnership, individual or association of persons aforesaid, shall be deemed and adjudged guilty of a conspiracy to defraud, and to be subject to the penalties as provided by this act.

SEC. 2. A "monopoly" is any union, or combination, or consolidation, or affiliation of capital, credit, property, assets, trade, custom, skill or acts, or any other valuable thing or possession, by or between persons, firms or corporations, whereby any one of the purposes or objects mentioned in this act is accomplished, or sought to be accomplished, or whereby any one or more of said purposes are promoted or attempted to be executed or carried

out, or whereby the several results described herein are reasonably calculated to be produced; and a "monopoly" as thus defined and contemplated, includes not merely such combinations by and between two or more persons, firms or corporations acting for themselves, but is especially defined and intended to include all aggregations, amalgamations, affiliations, consolidations or incorporations of capital, skill, credit, assets, property, custom trade, or other valuable thing or possession, whether effected by the ordinary methods of partnership or by actual union under the legal form of a corporation, or an incorporated body resulting from the union of one or more distinct firms or corporations, or by the purchase, acquisition or control of shares or certificates of stocks or bonds, or other corporate property or franchises, and all corporations or partnerships that have been or may be created by the consolidation or amalgamation of the separate capital, stock, bonds, assets, credits, properties, custom, trade or corporate or firm belongings of two or more firms or corporations or companies, are especially declared to constitute monopolies, within the meaning of this act, if so created or entered into for any one or more of the purposes named in this act; and a "monopoly," as defined in this section, is hereby declared to be unlawful and against public policy; and any and all persons, firms, corporations or associations of persons engaged therein shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

SEC. 3. If any person, persons, company, partnership, association or corporation engaged in the manufacture or sale of any article of commerce or consumption from the raw material produced or mined in this state shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell at less than the cost of manufacture, or give away their manufactured products, for the purpose of driving out competition or financially injuring competitors engaged in the manufacture and refining of raw material in this state, said person, persons, company, partnership, association or corporation resorting to this method of securing a monopoly in the manufacture, refining and sale of the finished product produced or mined in this state, shall be deemed guilty of a conspiracy to form or secure a

trust or monopoly in restraint of trade, and, on conviction, shall be subject to the penalties of this act.

SEC. 4. Any person, partnership, firm or association, or any representative or agent thereof, or any corporation or company, or any officer representative or agent thereof, violating any of the provisions of this act, shall forfeit not less than two hundred dollars, nor more than five thousand dollars, for every such offense, and each day such person, corporation, partnership or association shall continue to do so, shall be a separate offense, the penalties in such cases to be recovered by an action in the name of the state, at the relation of the attorney-general or the solicitor of the judicial circuit within which the offense was committed; the moneys thus collected to go into the state treasury, and to become a part of the general fund except as hereinafter provided. The amount of the forfeit to be fixed by the judge before whom the case is tried in each case, within the aforesaid limits; the collection of which penalty shall be enforced as the collections of fines against defendants upon conviction of a misdemeanor.

SEC. 5. If any two or more persons or corporations, who are engaged in buying or selling any article of commerce, manufacture, mechanism, merchandise, commodity, convenience, repair, any product of mining or any article or thing whatsoever, shall enter into any pool, trust, agreement, combination, confederation, association or understanding to control or limit the trade in any such article or thing; or to limit competition in such trade by refusing to buy from or sell to any other person or corporation any such article or thing aforesaid, for the reason that such other person or corporation is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding; or shall boycott or threaten any person or corporation for buying from or selling to any other person or corporation who is not a member of or a party to such pool, trust, agreement, combination, confederation, association or understanding, any such article or thing aforesaid, it shall be a violation of this act; and any person, firm, corporation or association of persons committing such violation shall be deemed and adjudged guilty of a conspiracy to defraud, and shall be subject to the penalties prescribed in this act.

SEC. 6. Any corporation created or organized by or under the laws of this state which shall violate any of the provisions of the preceding sections of this act shall hereby forfeit its corporate rights and franchises; and its corporate existence shall, upon the proper proof being made thereof in any court of competent jurisdiction in the state, be by the court declared forfeited, void and of no effect, and shall thereupon cease and determine; and any corporation created or organized by or under the law of any other state or country which shall violate any of the provisions of the preceding sections of this act, shall thereby forfeit its right and privilege thereafter to do any business in this state; and upon proper proof being made thereof in any court of competent jurisdiction in this state, its rights and privileges to do business in this state shall be declared forfeited; and in all proceedings to have such forfeiture declared, proof that any person who has been acting as agent of such foreign corporation in transacting its business in this state has been, while acting as such agent and in the name, behalf or interest of such foreign corporation, violating any provisions of the preceding sections of this act, shall be received as prima facie proof of the act of the corporation itself; and it shall be the duty of the clerk of said court to certify the decree thereof to the secretary of state.

SEC. 7. It shall be the duty of the attorney-general and the prosecuting attorney of each circuit where the offense is committed, respectively, to enforce the provisions of this act. The prosecuting attorney or solicitor shall institute and conduct all suits begun in the circuit courts, and upon appeal the attorney-general shall prosecute said suits in the supreme court.

SEC. 8. The provisions of the foregoing sections and the pains and penalties provided for violations of this act shall be held and construed to be cumulative to all laws now in force in this state; and provided, that the provisions of this act shall not exempt from punishment or forfeiture any person, firm, association of persons or corporations, who may have violated or offended against any law now in existence that may be or may be construed to be repealed by this act or in conflict herewith; and provided further, that nothing in this act shall be deemed or construed to affect any suits or prosecutions now pending or hereafter to be instituted upon any

course of action, forfeiture or penalty accruing or to accrue prior to the date of the taking effect of this act, but all such rights to maintain, institute or prosecute all such causes of action are hereby reserved to the state in the same manner and with the same effect as if this law had not been passed. (L. 1902, No. 574.)

## COURT DECISIONS.

Edwards *v.* Southern R. Co., 66 S. C., 277; 44 S. E., 748.

State *v.* Virginia-Carolina Chemical Co., 71 S. C., 544.

Walter A. Wood Mowing, etc., *v.* Greenwood Hardware Co., 75 S. C., 378.

Packard *v.* Byrd, 73 S. C., 1; 6 L. R. A. N. S., 547.

State *v.* Warehouse Commission, 92 S. C., 81.





## **SOUTH DAKOTA.**

### **CONSTITUTION.**

ART. XVII, SEC. 20. Monopolies and trusts shall never be allowed in this state and no incorporated company, co-partnership or association of persons in this state shall directly or indirectly combine or make any contract with any incorporated company, foreign or domestic, through their stockholders or the trustees or assigns of such stockholders, or with any co-partnership or association of persons, or in any manner whatever to fix the prices, limit the production or regulate the transportation of any product or commodity so as to prevent competition in such prices, production or transportation or to establish excessive prices therefor.

The legislature shall pass laws for the enforcement of this section by adequate penalties and in the case of incorporated companies, if necessary for that purpose may, as a penalty, declare a forfeiture of their franchises.

### **STATUTES.**

#### **ANTI-TRUST ACT OF 1909.**

SECTION 1. Within the meaning of this act a trust or monopoly is a combination of capital or skill, by two or more persons, firms, corporations, or association of persons.

First. To create or carry out restrictions in trade.

Second. To limit the production or to increase or reduce the price of commodities.

Third. To prevent competition in the manufacture, transportation, sale or purchase of merchandise, produce or commodities.

Fourth. To fix any standard or figure whereby the price to the public shall be in any manner established or controlled.

SEC. 2. That it shall be unlawful for any person or persons, corporations, co-partnership or association of per-

sons in this state, directly or otherwise, to fix prices, limit the production, or regulate the transportation of any produce or commodity so as to obstruct or delay or prevent competition in such production or transportation, or to obstruct or prevent competition in the purchase or sale of any product or commodity.

SEC. 3. That it shall be unlawful for any person or persons, corporation, co-partnership, or association of persons in any other state to directly or otherwise combine or make any contract, understanding or agreement with any person or persons, corporation, co-partnership or association of persons in this state to fix prices, limit the production of commodities or regulate the transportation, directly or otherwise, of any product or commodity so as to obstruct or prevent competition, or to prevent or obstruct competition in the purchase or sale of any product or commodity.

SEC. 4. That it shall be unlawful for any person or persons, corporation, co-partnership or association of persons in this state to directly or otherwise combine or make any contract, understanding or agreement with any person or persons, corporation, co-partnership or association of persons within or without this state to fix prices, limit the production of commodities, or regulate the transportation directly or otherwise of any product or commodity so as to obstruct or prevent competition within this state or so as to obstruct competition in the purchase or sale of any product or commodity within this state.

SEC. 5. That it shall be unlawful for two or more corporations, co-partnerships or associations of persons organized or existing without the State, but doing business within this state, to directly or otherwise combine or make any contract, understanding or agreement with each other to fix prices, limit the production of commodities or regulate the transportation directly or otherwise of any product or commodity so as to obstruct or prevent competition within this state or so as to obstruct or prevent competition in the purchase or sale of any product or commodity within this state.

SEC. 6. Any person or persons, co-partnership or association of persons or corporation, or any officer, agent or servant of any corporation, or association of persons convicted of violating any of the provisions of this act shall

be deemed guilty of a misdemeanor and upon conviction thereof shall be fined for the first offense not more than five thousand dollars and upon conviction of the second or any subsequent offense shall be fined not more than ten thousand dollars.

SEC. 7. All fines recovered under this act shall be paid as follows: One-half thereof into the general fund of the county in which the action is prosecuted and one-half into the general fund of the state.

SEC. 8. It shall be the special duty of the state's attorney of each county of this state, upon the affidavit of any person or persons, showing that any corporation, person or persons, association of persons, or any officer, agent or servant of any corporation, co-partnership or association of persons have violated any of the provisions of this act, or without such affidavit when he has reason to believe that any of the provisions of this act have been or are being violated to make complaint and cause the arrest of such person or persons, corporation, officer, agent or servant of any such corporation, co-partnership or association of persons and to prosecute such action in the court or courts having jurisdiction thereof, and it shall be the duty of such state's attorney to immediately upon making such complaint notify the attorney general thereof and it shall thereupon be the duty of such attorney general to aid in such prosecution. Provided, that the provisions of this section shall not be construed to prevent any person from making complaint to any court of competent jurisdiction for any violations of the provisions of this act, and in such case the court shall issue a warrant and proceed the same as though the state's attorney had made the complaint, and the court may also permit any attorney whom the complainant may employ to appear and prosecute such action at any stage of the proceedings therein. Provided further, that the provisions of this section shall not be construed to in any manner prevent the attorney general of this state from making a complaint in any court of competent jurisdiction for any violations of the provisions of this act and prosecute the same in the same manner and with the same powers as herein provided for state's attorneys.

SEC. 9. Any corporation organized and doing business under the laws of this state, which shall violate any of the provisions of this act, in addition to the penalties

hereinbefore provided, shall forfeit its charter and it shall be the duty of any state's attorney in this state and the attorney general to prosecute an action in the name of the state by quo warranto or other proper proceeding against any such offending corporation.

SEC. 10. Any foreign corporation authorized to do business within this state, which shall violate any of the provisions of this act shall in addition to the penalties hereinbefore provided, forfeit its right to do business in this state, and such foreign corporation may be restrained by an order of injunction issued by any court of competent jurisdiction in this state from further conducting business in this state.

The order of injunction mentioned herein may be issued upon affidavits which shall show to the satisfaction of the court or judge thereof to whom application is made that such corporation named as defendant in application and affidavit for an order of injunction, has violated some provisions of this act.

The order of injunction issued upon such affidavit may be served in the manner now provided by law for the service of such orders and in the absence of the defendant therein, such order of injunction may be served on the duly authorized resident agent of such corporation or upon any officer or managing agent thereof.

Any judge of a circuit court or of the supreme court may in like manner enjoin and restrain any corporation organized under the laws of this state from carrying on any manufacturing or wholesale or retail business, being conducted or carried on in violation of any of the provisions or spirit and intent of this act, in this state, and all final restraining orders may be perpetual or for such period and upon such terms and conditions as the court or judge thereof shall determine. All laws, rules and regulations now in force relative to applications for and granting orders of injunction in this state shall apply to proceedings under the provisions of this act, so far as the same are not different from or in conflict with the provisions of this act.

SEC. 11. That in all prosecutions, hearings and proceedings, under the provisions of this act, whether civil or criminal, no person shall be excused from attending and testifying, or from producing books, papers, contracts, agreements, or documents, before the courts of this state,

or in obedience to the subpoena of the same, on the grounds or for the reason that the testimony or evidence, documentary or otherwise required of him, may tend to criminate him or subject him to penalty or forfeiture, but the testimony so taken shall not be used against such witness in any criminal proceedings instituted against such witness in any of the courts of this state. Any person, or any officer or agent in the service or employ of any corporation, co-partnership or association of persons, who shall neglect or refuse to make returns, attend and testify or answer any lawful requirement hereinbefore provided for, or produce books, papers, contracts, agreements, and documents, if in his custody, or power to do so, in obedience to the subpoenas of the courts, shall be deemed guilty of contempt and be punished as is provided by law.

SEC. 12. That any suit in equity brought in any court in this state under this act, wherein the state is complainant, the attorney-general or the state's attorney may file with the clerk of such court a certificate that, in his opinion, the case is of general public importance, a copy of which shall be immediately furnished by such clerk to the judge of the court in which said case is pending. Thereupon such case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day.

SEC. 13. That whenever it shall appear to the court before which any civil or criminal proceedings under this act shall be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be summoned whether they reside in the county where the court is held or not, and subpoenas to that end may be served in that county.

SEC. 14. Any person or persons, co-partnership, corporation or association of persons, who may suffer damage by reason of the unlawful operation as hereinbefore provided, of any pool, trust or combination, may maintain a civil action therefor in any of the courts of this state having competent jurisdiction thereof, and may recover the amount of damages sustained, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court.

SEC. 15. It shall be the duty of the secretary of this state, on application for a charter to establish any cor-

poration, to require at least two of the incorporators to make oath or affirmation that such corporation is not formed for the purpose of enabling any corporation or corporations to avoid the provisions of this act and if such oath or affirmation be not made or is not satisfactory to the secretary of the state he is authorized to withhold such charter. (L. 1909, c. 224.)

## COURT DECISIONS.

Hartford Fire Ins. Co. *v.* Perkins, 125 Fed., 502.

State *v.* Central Lumber Co., 24 S. D., 136; 226 U. S., 157.

## TENNESSEE.

### CONSTITUTION.

ART. I, SEC. 22. Perpetuities and monopolies are contrary to the genius of a free state, and shall not be allowed.

[Adopted, February 23, 1870.]

### STATUTES.

#### ANTI-TRUST LAW OF 1903.

That from and after the passage of this act all arrangements, contracts, agreements, trusts or combinations between persons or corporations made with a view to lessen, or which tend to lessen full and free competition in the importation or sale of articles imported into this state, or in the manufacture or sale of articles of domestic growth or of domestic raw material, and all arrangements, contracts, agreements, trusts or combinations between persons or corporations designed, or which tend to advance, reduce or control the price or the cost to the producer or the consumer of any such product or article, are hereby declared to be against public policy, unlawful and void.

That any corporation chartered under the laws of the state which shall violate any of the provisions of this act shall thereby forfeit its charter and its franchise, and its corporate existence shall thereupon cease and determine. Every foreign corporation which shall violate any of the provisions of this act is hereby denied the right to do, and is prohibited from doing, business in this state. It is hereby made the duty of the attorney-general of this state to enforce these provisions by due process of law.

That any violation of the provisions of this act shall be deemed, and is hereby declared to be, destructive of full and free competition and a conspiracy against trade, and any person or persons who may engage in any such conspiracy or who shall, as principal, manager, director

or agent, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates or orders made in furtherance of such conspiracy, shall upon conviction be punished by a fine of not less than one hundred dollars or more than five thousand dollars, and by imprisonment in the penitentiary not less than one year nor more than ten years; or in the judgment of the court, by either such fine or imprisonment.

That any person or persons or corporations that may be injured or damaged by any such arrangement, contract, agreement, trust or combination, described in section 1 of this act, may sue for and recover in any court of competent jurisdiction in this state of any person or persons or corporation operating such trusts or combinations, the full consideration or sum paid by him or them of any goods, wares, merchandise or articles, the sale of which is controlled by such combination or trust. (L. 1903, c. 140; Secs. 1-4.)

See also note to section 6622 of Supplement to Shannon's Code (1903).

It shall be unlawful for any person, firm or corporation engaged in the business of manufacturing in this or any other state to give away or sell for a less price than the cost of manufacture any manufactured article in this state with the intent and purpose of destroying honest competition.

Any person or persons violating [the preceding section] shall be deemed guilty of a misdemeanor, and, upon conviction, shall be fined not less than ten nor more than five thousand dollars; provided, however, that nothing in this act shall be construed to prohibit the distribution to consumers of specimens of proprietary articles in good faith as a sample. (L. 1907, c. 36; as amended by L. 1907, c. 360.)

#### COURT DECISIONS.

*Bailey et al. v. Ass'n of Master Plumbers of Memphis*, 52 S. W., 853; 103 Tenn., 99; 46 L. R. A., 561.

*Mallory v. Hanaur Oil Works*, 86 Tenn., 598.

*American Handle Co. v. Standard Handle Co.*, Tenn. Ch. App., 59; S. W., 709.

*State v. Witherspoon*, 115 Tenn., 138.

*Standard Oil Co. v. State*, 117 Tenn., 618, 662; 10 L. R. A. N. S., 1027.

*Post v. Railroad*, 103 Tenn., 184.



## TEXAS.

### CONSTITUTION.

ART. I, SEC. 26. Perpetuities and monopolies are contrary to the genius of a free government and shall never be allowed.

ART. X, SEC. 5. No railroad or other corporation, or the lessees, purchasers or managers of any railroad corporation, shall consolidate the stock, property or franchises of such corporation with, or lease or purchase the works or franchises of or in any way control any railroad corporation owning or having under its control a parallel or competing line; nor shall any officer of such railroad corporation act as an officer of any other railroad corporation owning or having the control of a parallel or competing line.

SEC. 6. No railroad company organized under the laws of this state shall consolidate by private or judicial sale or otherwise with any railroad company organized under the laws of any other state or of the United States.

[Adopted, November 24, 1875.]

### STATUTES.

That a trust is a combination of capital, skill or acts by two or more persons, firms, corporations or associations of persons, or either two or more of them, for either, any or all of the following purposes:

1. To create or which may tend to create or carry out restrictions in trade or commerce or aids to commerce or in the preparation of any product for market or transportation, or to create or carry out restrictions in the free pursuit of any business authorized or permitted by the laws of this state.

2. To fix, maintain, increase or reduce the price of merchandise, produce or commodities, or the cost of insurance, or of the preparation of any product for market or transportation.

3. To prevent or lessen competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or the business of insurance, or to prevent or lessen competition in aids to commerce, or in the preparation of any product for market or transportation.

4. To fix or maintain any standard or figure whereby the price of any article or commodity of merchandise, produce or commerce, or the cost of transportation, or insurance, or the preparation of any product for market or transportation, shall be in any manner affected, controlled or established.

5. To make, enter into, maintain, execute or carry out any contract, obligation or agreement by which the parties thereto bind, or have bound themselves not to sell, dispose of, transport or to prepare for market or transportation any article or commodity, or to make any contract of insurance at a price below a common standard or figure, or by which they shall agree in any manner to keep the price of such article or commodity or charge for transportation or insurance, or the cost of the preparation of any product for market or transportation at a fixed or graded figure, or by which they shall in any manner affect or maintain the price of any commodity or article or the cost of transportation or insurance or the cost of the preparation of any product for market or transportation between them or themselves and others, to preclude a free and unrestricted competition among themselves or others in the sale or transportation of any such article or commodity or business of transportation or insurance or the preparation of any product for market or transportation, or by which they shall agree to pool, combine or unite any interest they may have in connection with the sale or purchase of any article or commodity or charge for transportation or insurance or charge for the preparation of any product for market or transportation whereby its price or such charge might be in any manner affected.

6. To regulate, fix or limit the output of any article or commodity which may be manufactured, mined, produced or sold, or the amount of insurance which may be undertaken, or the amount of work that may be done in the preparation of any product for market or transportation.

7. To abstain from engaging in or continuing business or from the purchase or sale of merchandise, produce or

commodities partially or entirely within the State of Texas, or any portion thereof.

SEC. 2. That a monopoly is a combination or consolidation of two or more corporations when effected in either of the following methods:

1. When the direction of the affairs of two or more corporations is in any manner brought under the same management or control for the purpose of producing, or where such common management or control tends to create a trust as defined in the first section of this act.

2. Where any corporation acquires the shares or certificates of stock or bonds, franchise or other rights, or the physical properties, or any part thereof, of any other corporation or corporations, for the purpose of preventing or lessening, or where the effect of such acquisition tends to affect or lessen competition, whether such acquisition is accomplished directly or through the instrumentality of trustees or otherwise.

SEC. 3. That either or any of the following acts shall constitute a conspiracy in restraint of trade:

1. Where any two or more persons, firms, corporations or associations of persons who are engaged in buying or selling any article of merchandise, produce or any commodity, enter into an agreement or understanding to refuse to buy from or sell to any other person, firm, corporation or association of persons any article of merchandise, produce or commodity.

2. Where any two or more persons, firms, corporations or associations of persons shall agree to boycott or threaten to refuse to buy from or sell to any person, firm, corporation or association of persons for buying from or selling to any other person, firm, corporation or association of persons.

SEC. 4. Any and all trusts, monopolies and conspiracies in restraint of trade as herein defined, are hereby prohibited and declared to be illegal.

SEC. 5. Any corporation holding a charter under the laws of the State of Texas, which shall violate any of the provisions of this act, shall thereby forfeit its charter and franchise, and its corporate existence shall cease and determine.

SEC. 6. For a violation of any of the provisions of this Act, or any anti-trust laws of this State, by any corporation, it shall be the duty of any judge or court, to institute suit or quo warranto proceedings in Travis county,

or at the county seat of any county in the State which the Attorney General may select, for the forfeiture of its charter rights and franchises, and the dissolution of its corporate existence, and for such purposes, venue is hereby given to each district court in the State of Texas. (As amended by Acts of 1909, p. 281.)

SEC. 7. When a corporation organized under the laws of this state shall have been convicted of a violation of any of the provisions of this act, and its charter and franchise has been forfeited, as provided in section 5, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas.

SEC. 8. Every foreign corporation violating any of the provisions of this act is hereby denied the right, and is prohibited from doing any business within this state, and it shall be the duty of the attorney-general to enforce this provision by injunction or other proceedings in the district court of Travis county, in the name of the State of Texas.

SEC. 9. The provisions of chapter 92 of the Revised Statutes of this state of 1895, to prescribe the remedy and regulate the proceedings by quo warranto, etc., shall, except in so far as they conflict herewith, govern and control the proceedings when instituted to forfeit any charter under this act.

SEC. 10. When any foreign corporation has been convicted of a violation of any of the provisions of this act, and its right to do business in this state has been forfeited, as provided in section 8 of this act, no other corporation to which the defaulting corporation may have transferred its properties and business, or which has assumed the payment of its obligations, shall be permitted to incorporate or do business in Texas.

SEC. 11. Each and every firm, person, corporation or association of persons, who shall in any manner violate the provisions of this Act shall for each and every day that such violation shall be committed or continued, forfeit and pay a sum of not less than fifty nor more than fifteen hundred dollars, which may be recovered in the name of the State of Texas, in the district court of any county in the State of Texas, and venue is hereby given to such district courts; provided, that when any such suit shall have been filed in any county and jurisdiction

thereof acquired, it shall not be transferred to any other county except upon change of venue allowed by the court, and it shall be the duty of the Attorney General, or the district or county attorney, under the direction of the Attorney General, to prosecute for the recovery of the same, and the fees of the district or county attorney for representing the State in all anti-trust proceedings, or for the collection of penalties for the violation of the anti-trust laws of this State, shall be ten per cent. of the amount collected up to and including the sum of fifty thousand dollars, to be retained by him when collected, and all such fees which he may collect shall be over and above the fees allowed under the general fee bill; provided, that the provisions of this Act as to the fees allowed the prosecuting attorney shall not apply to any case in which judgment has heretofore been rendered in any court nor to any moneys to be hereafter collected upon any such judgment heretofore rendered in any court, whether such judgment or judgments are pending upon appeal or otherwise; and provided, further, that the district or county attorney who joins in the institution or prosecution of any suit for the recovery of penalties for a violation of any of the anti-trust laws of this State, who shall, previous to the collection of such penalties, cease to hold office, he shall be entitled to an equal division with his successor of the fee collected in said cause, and in case of the employment of special counsel by any such district or county attorney, the contract so made shall be binding upon such prosecuting officer making such contract and thereafter retiring from office; provided, further, that in case any suit is compromised any final judgment in the trial court is had, then the fees herein provided for shall be reduced one-half. (As amended by Acts of 1909, pp. 281-2.)

SEC. 12. Any contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable either in law or equity.

SEC. 13. And in addition to all other penalties and forfeitures herein provided for, every person violating the provisions of this act shall be further punished by imprisonment in the penitentiary not less than two nor more than ten years.

SEC. 14. In prosecutions for the violation of any of the provisions of this act, evidence that any person has acted as the agent of a corporation in the transaction of its

business in this state shall be received as prima facie proof that his act in the name, behalf or interest of the corporation of which he was acting as the agent, was the act of the corporation.

SEC. 15. Upon the application of the attorney-general or of any of his assistants, or of any district or county attorney, acting under the direction of the attorney-general, made to any county judge, or any justice of the peace, in this state, stating that he has reason to believe that a witness, who is to be found in the county in which such county judge or justice of the peace is an officer, knows of a violation of any of the provisions of this act, it shall be the duty of the county judge, or of the justice of the peace, as the case may be, before whom such application is made, to have summoned and to have examined such witness in relation to violations of any of the provisions of this act, said witness to be summoned as provided for in criminal cases. The said witness shall be duly sworn, and the county judge, or justice of the peace, as the case may be, shall cause the statements of the witness to be reduced to writing and signed and sworn to before him, such sworn statement shall be delivered to the attorney-general, his assistants or the district or county attorney, upon whose application the witness was summoned. Should the witness summoned as aforesaid fail to appear; or to make statements of the facts within his knowledge, under oath, or to sign the same after it has been reduced to writing, he shall be guilty of contempt of court, and may be fined not exceeding one hundred dollars, and may be attached and imprisoned in the county jail until he shall make a full statement of all the facts within his knowledge with reference to the matter inquired about. Any person who shall testify before any county judge, or justice of the peace, as provided for in this act, or who shall testify as a witness for the state in the course of any statutory proceeding to secure testimony for the enforcement of this act, or in the course of any judicial proceeding to enforce the provisions of this act, shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he shall so give evidence, documentary or otherwise.

SEC. 16. All actions authorized and brought under this act shall have precedence, on motion of the prosecuting attorney or the attorney-general, of all other business,

civil and criminal, except criminal cases where the defendants are in jail.

SEC. 17. That all laws and parts of laws in conflict with this act be and the same are hereby repealed, and that Title CVIII of the Revised Civil Statutes of the State of Texas of 1895, and Arts. 5313, 5314, 5315, 5316, 5317, 5318, 5319, 5320, 5321 and 5321a thereof, be and the same are hereby expressly repealed; and that Arts. 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 988a, 988b, 988c, 988d, of c. 7, in Title XVIII, of the Penal Code of the State of Texas of 1895, be and the same are hereby expressly repealed; and that an act entitled "An act to define trusts, provide for penalties and punishment of corporations, persons, firms and associations of persons connected with them, and promote free competition in the State of Texas, and to repeal all laws and parts of laws in conflict with this act," approved April 30, 1895, and known and published as c. 83 of the General Laws of the Twenty-fourth Legislature, be and the same is hereby expressly repealed; and that an act entitled "An act to prohibit pools, trusts, monopolies and conspiracies to control business and prices of articles, to prevent the formation or operation of pools, trusts, monopolies and combinations of charters of corporations that violate the terms of this act, and to authorize the institution and prosecution of suits therefor," approved May the 25th, 1899, and published and known as Chapter CXLVI of the General Laws of the Twenty-sixth Legislature, be and the same are hereby expressly repealed; and that an act entitled "An act to amend Art. 5318, Title 108, of the Revised Civil Statutes of the State of Texas, prescribing penalties against trusts and conspiracies against trade," approved June 5th, 1899, and known as Chapter CLXXII of the General Laws of the Twenty-sixth Legislature, be and the same is hereby expressly repealed; provided nothing in this act shall be held or construed to affect or destroy any rights of the State of Texas to recover penalties or forfeit charters of domestic corporations, or prohibit foreign corporations from doing business in this state, for acts committed before this act takes effect.

SEC. 18. If any person shall enter into an agreement or understanding of any character to form a trust, or to form a monopoly or to form a conspiracy in restraint of trade (as these offenses are defined by Chapter XCIV of the Acts of the Twenty-eighth Legislature, which

chapter this act amends), or shall form a trust, monopoly or conspiracy in restraint of trade, or shall be a party to the formation of a trust, or monopoly, or conspiracy in restraint of trade, or shall become a party to a trust, or monopoly or conspiracy in restraint of trade, or shall do any act in furtherance of, or aid to, such trust or monopoly or conspiracy in restraint of trade, he shall be punished by imprisonment in the penitentiary for a period of not less than two years, nor more than ten years. If any person shall, as a member, agent, employee, officer, director or stockholder of any business, firm, corporation or association of persons, form, in violation of the provisions of Chapter XCIV of the Acts of the Twenty-eighth Legislature, which chapter this act amends, or shall operate in violation of the provisions of this act any such business, firm, corporation or association formed in violation of Chapter XCIV of the Acts of the Twenty-eighth Legislature, which chapter this act amends, or shall make any sale, or purchase, or any other contract, or do business for such business, firm, corporation or association, or shall do any other act which has the effect of violating or aiding in the violation of the provisions of Chapter XCIV of the Acts of the Twenty-eighth Legislature, which chapter this act amends, he shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years. If any person shall outside of this state do anything which if done within this state would constitute the formation of a trust, or monopoly, or conspiracy in restraint of trade, and shall cause or permit the trust or monopoly so formed by him to do business within this state, or shall cause or permit such trust, monopoly or conspiracy in restraint of trade to have any operation or effect within this state, or if such trust, monopoly or conspiracy in restraint of trade, having been formed outside of this state, any person shall give effect to such trust, monopoly or conspiracy in this state, or shall do anything to help or aid it in doing business in this state, or otherwise violate the antitrust laws of this state, or if any person shall buy or sell, or otherwise make contracts for or aid any other business for any business firm, corporation or association of persons, formed or operated in violation of the provisions of Chapter XCIV of the Acts of the Twenty-eighth Legislature, which chapter this act amends, or so formed or operated as would be in violation of the laws



of this state, if it had been formed within this state, shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years. If any person or employee or employees, or agent or agents, stockholder or stockholders, officer or officers, of any person, firm, association of persons, or corporations now doing business in this state, who has formed a trust as defined in Chapter XCIV of the Acts of the Twenty-eighth Legislature, which act this chapter amends, or formed a monopoly as defined in Chapter XCIV of the Acts of the Twenty-eighth Legislature, which chapter this act amends, or has formed a conspiracy in restraint of trade as defined in Chapter XCIV of the Acts of the Twenty-eighth Legislature, which chapter this act amends, shall do or perform any act of any character to carry out such trust, monopoly or conspiracy in restraint of trade, such person, employee or employees, agent or agents, stockholder or stockholders, officer or officers shall be punished by confinement in the penitentiary for not less than two years nor more than ten years.

SEC. 18. Criminal prosecutions under this act may be conducted in Travis county, Texas, or in any county in this state wherein a trust or conspiracy in restraint of trade is being carried on, a recovery or prosecution against any person for any violation of this act, or shall, with the intent or purpose of driving out competition, or for the purpose of financially injuring competitors, sell within this state at less than cost of manufacture or production, or sell in such a way, or give away within this state products for the purpose of driving out competition or financially injuring competitors engaged in a similar business, or give secret rebates on such purchase for the purpose aforesaid, shall not bar a prosecution of or recovery against any other person or persons for the same offense.

SEC. 19. If any person shall enter into an agreement or understanding of any character to form a trust, or to form a monopoly, or to form a conspiracy in restraint of trade as these offenses are defined by Chapter XCIV of the Acts of the Twenty-eighth Legislature, or shall form a trust, monopoly or conspiracy in restraint of trade, or shall be a party to the formation of a trust or monopoly or conspiracy in restraint of trade, or shall become a party to a trust or monopoly or conspiracy in restraint of trade, or shall do any act in furtherance of or aid to

such trust or monopoly or conspiracy in restraint of trade, he shall be punished by imprisonment in the penitentiary for a period of not less than two years nor more than ten years.

If any person shall, as a member, agent, employee, officer, director or stockholder of any business, firm, corporation or association of persons, form, in violation of the provisions of Chapter XCIV of the Acts of the Twenty-eighth Legislature, or shall operate in violation of the provisions of this act any such business, firm, corporation or association formed in violation of Chapter XCIV of the Acts of the Twenty-eighth Legislature, or shall make any sale, or purchase, or any other contract, or do business for such business, firm, corporation or association, or shall do any other act which has the effect of violating or aiding in the violation of the provisions of Chapter XCIV of the Acts of the Twenty-eighth Legislature, or shall with the intent or purpose of driving out competition or for the purpose of financially injuring competitors sell within this state at less than cost of manufacture or production or sell in such a way or give away within this state products for the purpose of driving out competition or financially injuring competitors engaged in a similar business, or give secret rebates on such purchase for the purpose aforesaid, he shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years.

If any person shall outside of this state do anything which, if done within this state, would constitute the formation of a trust or monopoly or conspiracy in the restraint of trade as defined by Chapter XCIV, p. 119, of the Acts of the Twenty-eighth Legislature, and shall cause or permit the trust or monopoly so formed by him to do business within this state, or shall cause or permit such trust, monopoly or conspiracy in restraint of trade to have any operation or effect within this state, or if such trust, monopoly or conspiracy in restraint of trade having been formed outside of said state, any person shall give effect to such trust, monopoly or conspiracy in this state, or he shall do anything to help or aid it doing business in this state, or otherwise violate the anti-trust laws of this state, or if any person shall buy or sell or otherwise make contracts for or aid any business, firm, corporation or association of persons, formed or operated in violation of the provisions of Chapter XCIV,

p. 119, of the Acts of the Twenty-eighth Legislature, or so formed or operated as would be in violation of the laws of this state if it had been formed within this state, shall be punished by confinement in the penitentiary for a period of not less than two years nor more than ten years.

If any person or employee or employees, or agent or agents, stockholder or stockholders, officer or officers of any person, firm, association of persons or corporation now doing business in this state, who have formed a trust as defined in Chapter XCIV, p. 119, of the Acts of the Twenty-eighth Legislature, or formed a monopoly as defined in Chapter XCIV, p. 119; of the Acts of the Twenty-eighth Legislature, or has formed a conspiracy in restraint of trade, as defined in Chapter XCIV, p. 119, of the Acts of the Twenty-eighth Legislature, or shall do or perform any act of any character to carry out such trust, monopoly or conspiracy in restraint of trade, such person, employee or employees, agent or agents, stockholder or stockholders, officer or officers shall be punished by confinement in the penitentiary for not less than two years nor more than ten years.

SEC. 20. Criminal prosecutions under this act may be conducted in Travis county, Texas, or in any county in this state wherein a trust, monopoly or conspiracy in restraint of trade is being carried on, a recovery or prosecution against any person for any violation of this act shall not bar a prosecution of or recovery against any other person or persons for the same offense.

SEC. 21. Prosecutions under this act may be instituted and prosecuted by any county or district attorney of this state, and when any such prosecutions have been instituted by any county or district attorney, such officer shall forthwith notify the attorney-general of such fact, and it is hereby made the duty of the attorney-general, when he shall receive such notice, to join such officer in such prosecution and do all in his power to secure the enforcement of this act.

SEC. 22. For every conviction obtained under the provisions of this act, the state shall pay to the county or district attorney in such prosecution the sum of \$250, and if both the county and district attorney shall serve together in such prosecution, such fee shall be divided between them as follows: \$100 to the county attorney and \$150 to the district attorney.

SEC. 23. That this act shall not repeal, modify or in any manner affect said Chapter XCIV, p. 119, of the Acts of the Twenty-eighth Legislature, or any section or provisions thereof, and this act is and is intended to be cumulative of said Chapter XCIV of the Acts of the Twenty-eighth Legislature of Texas.

(G. L. of 1903, 28th Legislature, chapter XCIV, p. 119, as amended by G. L. of 1907, amending Sec. 13, p. 194; Secs. 15, 221; Secs. 18, 19, 20 and 21 added by G. L. of 1907, p. 322, and as amended by G. L. of 1907, p. 456; G. L. of 1909, p. 281.)

#### MISCELLANEOUS ANTI-TRUST LAWS.

##### *Procedure by which evidence may be taken against trusts.*

SECTION 1. Whenever any suit shall be instituted or is pending in any court of competent jurisdiction in this state, by the attorney-general or by any district or county attorney, acting under his direction against any corporation, or corporations, individual or individuals, or association of individuals, or joint stock associations, or co-partnerships under any law of this state, against trusts, monopolies or conspiracies in restraint of trade, or under any laws of this state regulating or controlling corporations, domestic or foreign, the attorney-general, district or county attorney, as the case may be, may, in addition to the means now provided by law, examine and procure the testimony or evidence of witnesses and have books, papers and documents produced as evidence, in the manner herein provided.

SEC. 2. Whenever any action is commenced or is pending, as contemplated in section 1 of this act, by the attorney-general, or by any district or county attorney, acting under his direction, and said officer representing the state, either upon trial of the case, or in preparation for the trial thereof, desires to take the testimony of any officer, director, agent or employee of any foreign or domestic corporation, or joint stock association proceeded against, or in case of any copartnership, any member thereof, or in case of any individual or individuals, either of them, and the person or persons whose testimony is desired, resides either within or without the State of Texas, the said officer shall file in said court where the action is brought, either in term time or in vacation, or

with any special commissioner who may be appointed by the court to take testimony, as provided for in this act, a statement in writing setting forth the name or names and residence of the person or persons whose testimony he desires to take, and in a general way shall designate any books, papers or documents he desires produced, and the time when and place where, either within or without this state, he desires such person to appear and testify, or to produce books, papers and documents, if any are desired; and thereupon the judge of said court, or the commissioner, as the case may be, before whom said testimony is being or shall be taken, shall immediately issue a notice in writing, directed to the attorney or attorneys of record, in said cause, or the agent, officer or employee of any corporation or joint stock association, or directed to the attorney or attorneys of record of any copartnership, individual or individuals, or to any member of such copartnership, or to any individual or individuals who are defendant or defendants in said action, notifying said attorney or attorneys of record, or officer, agent, or employee, aforesaid, or member or members of any copartnership, or individual as herein provided, that the testimony of the person or persons, named in said notice, is desired, and requiring said attorney or attorneys of record, or such officer, agent, or employee aforesaid, or member of such copartnership, or any individual to whom said notice is delivered, or upon whom the same is served, to notify and have said witness or witnesses whose testimony or evidence it is desired to take, at the place named in said notice, at the time fixed therein, before the court or special commissioner named, then and there to testify, and then and there to have and produce such books, papers and documents as are called for, and for any of the purposes herein provided; provided, that if the taking of such evidence be not concluded on the day and date specified in said notice, the court or the commissioner, as the case may be, may continue the taking of same from day to day, or adjourn from day to day, at the same place, until the taking of such evidence has been concluded.

SEC. 3. Whenever any officer, director, agent or employee of any foreign or domestic corporation or joint stock association, authorized to do business in this state, or any member of any copartnership or any individual, against whom suit has been filed, or is pending, as pro-

vided for in this act, or the attorney or attorneys of record of any such corporation, joint stock association, copartnership or individual, shall be notified in accordance with the provisions of this act, that any of the books, papers or documents belonging to such corporation, joint stock association, copartnership or individual are wanted before the court, or special commissioner, as provided in this act, it shall be the duty of such defendant corporation, joint stock association, copartnership or individual, as the case may be, to produce and present, or cause to be produced and presented, as required in said notice, all such books, papers and documents belonging to any such defendant or under such defendant's control as may be specified in said notice, in court or before said special commissioner, at the time and place so specified, and in the event of the failure or refusal of any such corporation, joint stock association, copartnership or individual to comply with any of the provisions of this section, it shall be the duty of the court, upon the motion of the officer representing the state, to strike out all the pleadings, answers, motions, reply or demurrer theretofore or thereafter filed in such case by such defendant, corporation, joint stock association, copartnership or individual, as the case may be, and render judgment by default against any such defendant.

SEC. 4. Whenever any attorney or attorneys of record, or any agent, officer, employee of any corporation or joint stock association proceeded against, as herein provided, shall be notified that any officer, director, agent or employee of any such corporation or joint stock association is wanted before said court, or any special commissioner, as provided herein, to give his testimony or to produce any such books, papers or documents of said corporation or joint stock association, as the case may be, or if any attorney or attorneys of record of any copartnership or individual shall be notified that any member or members of said copartnership, or any individual, who are defendants in any such action are desired as witnesses, or to produce books, papers or documents, before any court or before any special commissioner appointed to take testimony in said proceeding, as herein provided; it shall be the duty of such attorney or attorneys of record, or any such officer, director, agent or employee to immediately notify any such person of the time and place where he shall attend and give his testimony, or produce any

such books, papers or documents, if any are desired; and if the person or persons whose testimony is desired, as herein provided, shall fail to appear, or appearing shall refuse to testify or shall fail to produce whatever books, papers or documents he or they may be ordered to produce, as before provided, then it shall be the duty of the court, upon motion of the attorney-general, district or county attorney, as the case may be, on proof of such refusal, failure or dereliction to strike out the answer, motion, reply, demurrer or other pleading theretofore or thereafter filed in such action, by said delinquent defendant, who has himself, or being a corporation or joint stock association, whose officer, agent, director or employee, as herein provided, has refused or failed to attend and testify, or to produce all books, papers or documents demanded, which were in the custody or subject to the control of such witness or witnesses, or corporation or joint stock association; and said court shall, in the event of any such refusal or failure, proceed to render judgment by default against any such defendant; provided, however, that if any such defendant shall file a sworn denial in writing, in said court, setting forth that such failure or refusal did not arise by reason of any fault or procurement of defendant, the court shall hear evidence upon that issue, and if the defendant shows to the satisfaction of the court that any witness who failed to attend did not do so at the instance or procurement of said defendant, or that the books, papers or documents demanded were not in its possession or control and could not be produced, and that such defendant had complied with all the provisions of this act, within such defendant's power to perform, then in that event the answer, motion, reply, demurrer or other pleadings shall not be stricken out or judgment by default taken because of the failure of the witness to attend; who could not be so procured, or because of the failure to produce the books, papers or documents not in the possession or under the control of such defendant; but the court shall have the power to enter such further orders in respect to the matter in controversy as it may deem necessary for the proper administration of justice; provided further, that in any proceeding had before a special commissioner, as herein provided, the certificate of the special commissioner showing the failure or refusal of any such witness or witnesses to appear and testify, or to produce any

books, papers or documents desired, shall be sufficient prima facie evidence of such failure, refusal or dereliction on the part of any such defendant, when same is filed in court. Any witness attending any proceeding herein provided for in compliance with any notice or subpoena issued by authority of this act, shall receive as compensation one dollar per day for each day of his attendance, and four cents per mile traveled computed upon the shortest practicable route; any claim for fees and mileage shall be filed with the court, or special commissioner, and sworn to by said witness, and shall be taxed up as costs and collected as other costs in civil cases.

SEC. 5. The court, or presiding judge thereof, in which any proceeding as herein provided is pending, in term time or in vacation, upon application therefor, made by the attorney-general, or district or county attorney, acting under his direction, shall appoint some well qualified disinterested person as special commissioner, to take testimony, in any such case, at any point either within or without the state, as designated in such application, or where requested by either party to said cause of action, upon the issues joined in said cause, such special commissioner shall have full power and authority to issue notices provided for in section 2 of this act, and to issue subpoenas for witnesses, compelling the attendance of such witnesses, the production of books, papers or documents, to issue attachments, to punish for contempt to the same extent as provided by law for said court; to administer oaths to witnesses; to have all witnesses examined orally, which testimony shall be reduced to writing and may be taken down by a competent stenographer and transcribed, and shall be signed and sworn to by said witness. The person appointed as special commissioner in any case shall qualify by taking oath prescribed by the constitution of this state for officers, and shall, with all convenient speed, certify and return the testimony taken by him to the court appointing him; and said commissioner shall note all objections to testimony, and shall not exclude any testimony, and all questions as to the materiality or admissibility of same shall be reserved for the court trying the case, and such testimony so taken may be read in evidence upon the trial of the suit in which same was taken, subject to any legal objections which might be made to same. The compensation of such



commissioner shall be his actual expenses in traveling and such fees as are allowed a notary public in taking depositions, to be taxed up as costs and collected in the same manner as now provided by law for district clerks in civil cases.

SEC. 6. When any notice is issued and served, as provided for in this act, ten full days exclusive of the day of service shall elapse before any witness so requested shall be compelled to appear and testify, or produce any books, papers or documents called for, and if the taking of testimony shall not be concluded on the date named in said notice, the witness or witnesses shall remain in attendance from day to day until the same is completed or said witness is finally discharged by the court, or commissioner, as the case may be; service of said notice and the return thereon may be made by any sheriff or constable of this state, or by any disinterested person competent to make oath of the fact, and shall be made by said person executing the same, by delivering to the person or persons, attorney or attorneys to be served a true copy of such notice, and return of such service shall be endorsed on or attached to the original notice; it shall state when the same was served and the manner of service, and upon whom served, and shall be signed, and if served by any person other than an officer, shall be sworn to by the party making the service before some officer authorized by law to take affidavits, and such affidavit shall be certified under the hand and official seal of such officer.

SEC. 7. Any witness for the state who shall testify or produce any books, papers or documents in any proceeding or examination under the provisions of this act shall not be subject to indictment or prosecution for any transaction, matter or thing concerning which he truthfully testifies or produces evidence, documentary or otherwise.

SEC. 8. The provisions of this act shall be cumulative of all laws of this state, and shall not be construed as repealing any other law relating to the taking of testimony or evidence; but shall be construed as providing an additional means of securing evidence for the enforcement of the laws, as herein provided. (G. L. of 1907, p. 16.)

STATUTE RELATING TO FINES, PENALTIES AND FORFEITURES  
DUE THE STATE OF TEXAS.

SECTION 1. Whenever any corporation created under the laws of this state, or any foreign corporation authorized to do business in this state, shall violate any law of this state, including any law against trusts, monopolies and conspiracies, or combinations or contracts in restraint of trade, for the violation of which fines or penalties or forfeitures are provided, all property of such corporation within this state at the time of such violation, or which may thereafter come within this state, shall, by reason of such violation, become liable for such fines or penalties and for all costs of suit and of collection, and the state of Texas shall have a lien on all such property from the date that suit shall be instituted by the attorney general or district or county attorney acting under his direction in any court of competent jurisdiction within this state for the purpose of forfeiting the charter or canceling the permit of such corporation, or for such fines or penalties. The institution of such suit for such fine, penalties or forfeiture shall constitute notice of such lien. Where any such law has heretofore been violated, or shall be violated before the taking effect of this act, and a cause of action exists for such fine, penalties or forfeiture, or shall come into existence before the taking effect of this act, and suit shall be filed in such case, the state shall have a lien to secure the payment of such fine, penalties and costs from the time this act shall take effect on all property of such corporation within this state of which shall thereafter become or be brought within the state.

SEC. 2. Any action or cause of action for any fine, forfeiture or penalty that the state of Texas has or may have against any corporation chartered under the laws of this or any other state, territory or nation, shall not abate or become abated by reason of the dissolution of such corporation, whether voluntary or otherwise, or by the forfeiture of its charter. Whenever a corporation against which the state has heretofore instituted suit, or shall hereafter institute suit, for forfeiture of its charter, or cancellation of its permit, or for fines or penalties under any law of this state, shall dissolve in this or any other state, or shall have a judgment rendered against it in this or any other state, for the forfeiture of its charter, the court in this state in which such suit is pending shall

appoint a receiver for the property and business of such corporation within this state or that may come or be brought within this state during such receivership, or the court may, in any case wherein the state is suing any such corporation for the forfeiture of its charter, or of its permit to do business in this state, or for fines or penalties, appoint a receiver for such corporation, whenever the interest of the state may seem to require such action. If such dissolution shall take place or judgment of forfeiture be rendered against such corporation before this act takes effect, the court shall, upon the taking effect of this act, appoint a receiver for the property and business of such corporation in this state; and the state shall have the right to the writs of attachment, garnishment, sequestration or injunction, without bond, to aid in the enforcement of its rights created by this act; and all property that may come into the possession of any receiver appointed under the provisions of this act, not otherwise exempt by law, shall be subject to the lien herein created, and for the payment of any such fine or penalty.

SEC. 3. The attorney-general, or any district or county attorney acting under his direction, may bring suit in the name of the State of Texas for the foreclosure of such lien in the district court of any county in the State of Texas, and in case the suit for foreclosure should be brought against any corporation which has dissolved or had a judgment for the forfeiture of its charter or the cancellation of its permit rendered against it, pending any suit by the State of Texas against such corporation for the forfeiture of its charter or cancellation of its permit or for penalties or fines, service may be had upon any person within this state who acted and was acting as agent of any such corporation in this state at the time of such dissolution or forfeiture of charter or cancellation of permit.

SEC. 4. The rights and remedies given by this act shall be construed as cumulative of all other laws in force in this state, and shall not affect, change or repeal any other remedies or rights now existing in this state for the enforcement, payment or collection of fines, penalties and forfeitures.

SEC. 5. In case any suit should heretofore be brought in any of the courts of this state for the recovery of penalties mentioned in this act, the same shall not be settled

or compromised without trial upon the merits thereof without the consent and approval of the attorney-general of the state. (G. L., 1907, p. 175.)

## COURT DECISIONS.

- Gulf, C. & S. F. Ry. Co. v. State, 72 Tex., 404.  
 Texas Standard Oil Co. v. Adoue, 83 Tex., 650.  
 Wiggins v. Bisso, 92 Tex., 219.  
 Beer v. Landman, 88 Tex., 450.  
 Welch v. Phelps & Bigelow Wind Mill Co., 89 Tex., 655.  
 Texas & P. Coal Co. v. Lawson, 89 Tex., 394.  
 Texas Brewing Co. v. Templeman, 90 Tex., 277.  
 Fuqua v. Pabst Brewing Co., 90 Tex., 298.  
 Houck & Dieter v. Anheuser-Busch Brewing Co., 88 Tex., 184; 27 S. W., 692.  
 Queen Ins. Co. v. State, 86 Tex., 250.  
 State v. Shippers Comp. & Warehouse Co., 95 Tex., 603; 67 S. W., 1049.  
 State v. Laredo Ice Co., 96 Tex., 461.  
 Gates v. Hooper, 90 Tex., 563.  
 Fort Worth & D. C. Ry. Co. v. State, 99 Tex., 34; 88 S. W., 370.  
 State v. Missouri, K. & T. Ry. Co., 99 Tex., 516.  
 Norton v. Thomas & Sons Co., 99 Tex., 578.  
 Lytle v. Galveston, H. & S. A. Ry. Co., 100 Tex., 292.  
 Albertype Co. v. Gust Fiest Co., 102 Tex., 219; 109 S. W., 1139.  
 Lone Star Salt Co. v. Blount, 49 Tex. Civ. App., 138.  
 Crystal Ice Mfg. Co. v. San Antonio Brewing Assn., 8 Tex. Civ. App., 1.  
 Anderson v. Rowland, 18 Tex. Civ. App., 460.  
 Wolff v. Hirschfield, 23 Tex. Civ. App., 670.  
 Wolf Co. v. Galbraith, 35 Tex. Civ. App., 505.  
 Crystal Ice, etc., Co. v. State, 23 Tex. Civ. App., 293.  
 Jones v. Carter, 45 Tex. Civ. App., 450.  
 Clark v. Cyclone Woven Wire Fence Co., 22 Tex. Civ. App., 41.  
 San Antonio Gas Co. v. State, 22 Texas Civ. App., 118.  
 Mason v. Adoue, 30 Tex. Civ. App., 276.  
 Crump v. Ligon, 37 Tex. Civ. App., 172.  
 Redland Fruit Co. v. Sargent, 51 Tex. Civ. App., 619.  
 Waters-Pierce Oil Co. v. State, 48 Tex. Civ. App., 162; affirmed, 212 U. S., 86; and see Atty. Gen. v. Waters-Pierce Oil Co., 67 S. W., 1057.

Pasteur Vaccine Co. v. Burkey, 22 Tex. Civ. App., 232.  
 Columbia Carriage Co. v. Hatch, 19 Tex. Civ. App., 120.  
 Lewis v. Weatherford, M. W. & N. W. Ry. Co., 36 Tex. Civ. App., 48.

Waters-Pierce Oil Co. v. State, 19 Tex. Civ. App., 1; affirmed, 177 U. S., 28.

Vanderweghe v. American Brewing Co., 61 S. W., 526.  
 S. S. White Dental Mfg. Co. v. Hertzberg, 51 S. W., 355.  
 Troy Buggy Works v. Fife & Miller, 74 S. W., 956.  
 Simmons & Co. v. Terry, 79 S. W., 1103.  
 Star Mill & Elevator Co. v. Ft. Worth Grain & Elev. Co., 146 S. W., 604.

Nickels v. Prewitt Auto Co., 149 S. W., 1094.  
 Wheatley v. Kollaer, 133 S. W., 903.  
 State v. Racine Sattley Co., 134 S. W., 400.  
 Forrest Photo. Co. v. Hutchinson Gro. Co., 108. S. W., 768.

National Cotton Oil Co. v. State, 72 S. W., 615.  
 Comer v. Burton-Lingo Co., 58 S. W., 969.  
 Springfield F. & M. Ins. Co. v. Cannon, 46 S. W., 375.  
 Jersey Creme Co. v. McDaniel Bros., 152 S. W., 1187.  
 Texas Brewing Co. v. Durrum, 46 S. W., 880.  
 Texas Brewing Co. v. Anderson, 40 S. W., 337.  
 Texas Brewing Co. v. Meyer, 38 S. W., 263.  
 Erwin v. Hayden, 43 S. W., 610.  
 Patterson v. Crabb, 51 S. W., 870.

Cases frequently cited in these proceedings, but which involve not the statute but the constitutional provision forbidding the creation of monopolies, are:

City of Brenham v. Brenham Water Co., 67 Tex., 561.  
 Hartford Fire Ins. Co. v. City of Houston, 102 Tex., 317.

Edwards County v. Jennings, 89 Tex., 618.  
 Altgelt v. City of San Antonio, 17 S. W. 75; 81 Tex., 436.



## UTAH.

### CONSTITUTION.

ART. 12, SEC. 20. Any combination by individuals, corporations, or associations, having for its object or effect the controlling of the price of any products of the soil, or of any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited, and hereby declared unlawful, and against public policy. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, it may declare a forfeiture of their franchise.

### STATUTES.

Any combination by persons having for its object or effect the controlling of the prices of any professional services, any products of the soil, any article of manufacture or commerce, or the cost of exchange or transportation, is prohibited and declared unlawful. (Sec. 1752.)

Any person or association of persons who shall create, enter into, become a member of, or a party to, any pool, trust, agreement, combination, confederation or understanding with any other person or persons, to regulate or fix the price of any article of merchandise or commodity; or shall enter into, become a member of, or a party to, any pool, trust, agreement, contract, combination or confederation to fix or limit the amount or quantity of any article, commodity or merchandise to be manufactured, mined, produced or sold in this state, shall be deemed and adjudged guilty of a conspiracy to defraud, and be subject to punishment as hereinafter provided. (Sec. 1753.)

It shall not be lawful for any corporation to issue or to own trust certificates; or for any corporation, agent, officer or employee, or the directors or stockholders of

any corporation, to enter into any combination, contract or agreement with any person or persons, the purpose or effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured products thereof, in the hand of any trustee or trustees, with the intent to limit or fix the price, or lessen the production and sale of any article of commerce, use, or consumption, or to prevent, restrict, or diminish the manufacture or output of any such article, or to monopolize any part of the trade or commerce within this state. (Sec. 1754.)

If a corporation, a company, a firm or association shall be found guilty of a violation of any provision of this title, it shall be punished by a fine in any sum not less than one hundred dollars nor more than two thousand dollars for the first offense; and for the second offense, not less than five hundred dollars nor more than five thousand dollars; and for the third offense, not less than five thousand dollars nor more than ten thousand dollars; and for every subsequent offense shall be liable to a fine of fifteen thousand dollars. (Sec. 1755.)

Any president, manager, director or other officer, agent or receiver of any corporation, company, firm or association, or any member of any company, firm or association, or any individual found guilty of a violation of any provision of this title, may be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by confinement in the county jail not more than one year, or by both, in the discretion of the court before which such conviction may have been had. (Sec. 1756.)

Any contract or agreement in violation of any provision of this title shall be absolutely void. (Sec. 1757.)

Any corporation organized or existing under the laws of this state that shall violate any provisions of this title shall thereby forfeit its corporate rights and franchises, and its corporate existence shall thereupon cease and determine. (Sec. 1758.)

It shall be the duty of the secretary of state, upon satisfactory evidence that any corporation or association of persons, incorporated, or operating under the laws of this state, has entered into any trust, combination or association, as mentioned in the preceding provisions of this title, to give notice to such corporation that unless it withdraws from and severs all business connections with



said trust, combination or association, its corporate right and franchise will be revoked at the expiration of thirty days from the date of such notice. (Sec. 1759.)

At the expiration of thirty days, if such withdrawal or severance be not theretofore made, the secretary of state shall cause a certified statement of the facts to be filed in the office of the attorney-general of the state, who shall commence, or direct any county attorney in the state to commence, an action, in any district court of the state of competent jurisdiction, to forfeit and revoke the corporate rights and franchise of such corporation. On the final decision of the same, should the defendant be found guilty of a violation of any of the provisions of this title, the court shall render judgment that the charter, corporate rights and franchises of such corporation be revoked and the secretary of state shall thereupon make publication of such revocation in four newspapers in general circulation in four of the largest cities of the state. (Sec. 1760.)

In case any person or persons shall do, cause to be done, or permit to be done, any act, matter or thing in this title prohibited or declared to be unlawful, such person or persons shall be liable to the person or persons injured thereby for treble the amount of damages sustained in consequence of any such violation. (Sec. 1761.)

The word "person" or "persons," whenever used in this title, shall be deemed to include corporations, companies and associations, existing under or authorized by the laws of either the United States or any of the territories, any state, or any foreign country. (Sec. 1762.)

[Charter 12. Acts 1913.]

UNFAIR DISCRIMINATION AND COMPETITION IN THE BUYING  
AND SELLING OF DAIRY PRODUCTS, POULTRY AND EGGS.

SECTION 1. Any person, firm, company, association or corporation, foreign or domestic, doing business in the State of Utah and engaged in the business of buying milk, cream or butter fat for the purpose of manufacture or sale, or of buying poultry or eggs for the purpose of sale or storage, that shall for the purpose of creating a monopoly or destroying the business of a competitor, discriminate between different sections, communities, localities, cities or towns of this State by purchasing such com-

modity or commodities at a higher price or rate in one section, community, location, city or town than is paid for the same commodity by said person, firm, company, association or corporation in another section, community, locality, city or town after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of purchase to the point of manufacture, sale or storage, shall be deemed guilty of unfair discrimination which is hereby prohibited and declared to be unlawful, but prices made to meet competition in such locality shall not be in violation of this act; and any person, firm, company, association or corporation or any officer, agent, receiver or member of such firm, company, association or corporation found guilty of unfair discrimination as herein defined shall be punished by a fine in any sum not more than five thousand dollars, or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment.

Approved February 21, 1913.

[Chapter 41. Acts 1913.]

#### UNFAIR COMPETITION AND DISCRIMINATION.

SECTION 1. Any person, firm or corporation, foreign or domestic, doing business in the State of Utah, and engaged in the production, manufacture or distribution of any commodity in general use, that intentionally, for the purpose of destroying the competition of any regular, established dealer in such commodity, or to prevent the competition of any person, who in good faith intends and attempts to become such dealer, shall discriminate between different sections, communities, or cities, of this State by selling such commodity at a lower rate in one section, community or city, or any portion thereof, than such person, firm or corporation, foreign or domestic, charges for such commodity in another section, community or city, after equalizing the distance from the point of production, manufacture, or distribution and freight rates therefrom, shall be deemed guilty of unfair discrimination.

SEC. 2. If complaint shall be made to the attorney-general that any corporation is guilty of unfair discrimination as defined by this act, he shall investigate such

complaint and for that purpose he may subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and, if in his opinion sufficient grounds exist therefor, he may prosecute an action in the name of the State in the proper court to annul the charter or revoke the permit of such corporation, as the case may be, and to permanently enjoin such corporation from doing business in this State, and if in such action the court shall find that such corporation is guilty of unfair discrimination as defined by this act, such court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this State.

SEC. 3. Any person, firm, or corporation violating the provisions of Section 1 of this act, shall upon conviction thereof, be fined not less than one hundred dollars, nor more than three thousand dollars for each offense.

Approved March 12th, 1913.



## VERMONT.

### STATUTES.

#### AMOUNT OF CAPITAL STOCK ; LIMITATIONS AND RESTRICTIONS.

The capital stock of such corporation shall not be less than five hundred dollars, and shall be divided into shares not exceeding one hundred dollars each. Such capital stock may be increased at a meeting of the stockholders warned for that purpose. But no articles of association or certificates of increase of capital stock, increasing the capital stock of any corporation organized under this chapter to an amount exceeding ten million dollars, shall be filed by the secretary of state until the same have been submitted to a judge of the supreme court, who shall have the power to determine, with or without hearing, whether such proposed corporation may or may not be organized under the provisions of this chapter. Such judge shall not permit the organization of such corporation if in his opinion its organization is liable to create a monopoly or result in restraining trade. Shares of stock may be issued as preferred stock both as to dividends and on liquidation, under such terms and provisions as the articles of association or certificate of increase of capital stock may provide. But no stock shall be in any way preferred unless the terms of preference are definitely stated in the stock certificate; nor, in the case of stock issued under a certificate of increase of capital stock, unless its preference is authorized and approved by the unanimous vote of the common stock. (Sec. 4311, as amended by L. 1910, No. 143, Sec. 4.)



## **VIRGINIA.**

### **CONSTITUTION.**

**SEC. 165.** The general assembly shall enact laws preventing all trusts, combinations and monopolies inimical to the public welfare.





## WASHINGTON. •

### CONSTITUTION.

ART. XII, SEC. 22. Monopolies and trusts shall never be allowed in this state, and no incorporated company, copartnership or association of persons in this state shall directly or indirectly combine or make any contract with any other incorporated company, foreign or domestic, through their stockholders, or the trustees or assignees of such stockholders, or with any copartnership or association of persons, or in any manner whatever, for the purpose of fixing the price or limiting the production or regulating the transportation of any product or commodity. The legislature shall pass laws for the enforcement of this section by adequate penalties, and in case of incorporated companies, if necessary for that purpose, may declare a forfeiture of their charter.

### COURT DECISIONS.

Wood v. City of Seattle, 23 Wash., 1; 52 L. R. A., 369.



## **WEST VIRGINIA.**

**NOTE:** There are no anti-trust statutes in West Virginia.



## WISCONSIN.

### STATUTES.

Any corporation organized under the laws of this state which shall enter into any combination, conspiracy, trust, pool, agreement or contract intended to restrain or prevent competition in the supply or price of any article or commodity in general use in this state, or constituting a subject of trade or commerce therein, or which shall in any manner control the price of any such article or commodity, fix the price thereof, limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this state, or fix any standard or figure by which its price to the public shall be in any manner controlled or established, shall upon proof thereof, in any court of competent jurisdiction have its charter or authority to do business in this state cancelled and annulled. Every \* \* \* corporation shall, upon filing its annual \* \* \* report with the secretary of state, make and attach thereto the affidavit of its president, secretary or general managing officer, fully stating the facts in regard to the matters specified in this section. (S., Sec. 1791j; L. 1907, p. 432.)

Upon complaint being made to the attorney-general and evidence produced to him which shall satisfy him that any such corporation has violated any of the conditions specified in sections 1791j and 1791k, he shall forthwith bring an action in the name of the state in any circuit court of this state to have the charter of such corporation forfeited, cancelled and annulled, and upon due proof being made thereof to the satisfaction of the court, judgment shall be entered therefor. (S., Sec. 1791l; L. 1905, p. 944.)

Any foreign corporation which shall enter into any combination, conspiracy, trust, pool, agreement or contract intended to restrain or prevent competition in the supply or price of any article or commodity in general

use in the state, or constituting a subject of trade or commerce therein, or which shall in any manner control the price of any such article or commodity, fix the price thereof, limit or fix the amount or quantity thereof to be manufactured, mined, produced or sold in this state, or fix any standard or figure by which its price to the public shall be in any manner controlled or established, shall, upon proof thereof, in any court of competent jurisdiction, have its license or authority to do business in this state cancelled and annulled. (S., Sec. 1770g; L. 1905, p. 937.)

No foreign corporation shall be authorized to file its charter or articles of incorporation or association with the secretary of state, or be authorized to do business in this state unless it shall at the time of making application therefor file with the secretary of state an affidavit executed by its president, secretary or general managing officer stating that such corporation has not violated any of the provisions of section 1770g; and every such corporation shall, upon filing its annual statement with the secretary of state, make and attach thereto the affidavit of its president, secretary or general managing officer, fully stating the facts in regard to the matters specified in section 1770g. (S., Sec. 1770h; L. 1905, p. 937.)

Upon complaint being made to the attorney-general and evidence produced to him which shall satisfy him that any such foreign corporation has violated any of the conditions specified in sections 1770f and 1770g, he shall forthwith bring an action in the name of the state in any circuit court of this state to have the license of such corporation to do business in this state cancelled and annulled and upon due proof being made thereof to the satisfaction of the court, judgment shall be entered therefor. The provisions of section 1791m shall extend to all proceedings under this and the two foregoing sections. (S., Sec. 1770i; L. 1905, p. 937.)

#### POWER TO HOLD STOCKS AND BONDS OF OTHER CORPORATIONS.

In all cases in which one corporation shall hold stock in another, such stock shall, at all meetings of the stockholders of the latter corporation, be voted by the president of the former, unless its board of directors, by resolution adopted at any regular or special meeting of such

board, designate some other person for that purpose; and any one or more officers of the former corporation may be chosen, qualify and act as directors and officers of the latter corporation, as in the case of other stockholders. (S. Sec. 1776a; L. 1905, p. 30.)

Acts 1913.

[No. 77, A.]

SECTION 1791n—9. 1. Any person, firm, or corporation, foreign or domestic, doing business in this state and engaged in the production, manufacture or distribution of any commodity in general use, that shall intentionally, for the purpose of destroying the competition of any regular, established dealer in such commodity or to prevent competition of any person who, in good faith, intends or attempts to become such dealer, discriminate between different sections, communities, or cities of this state, by selling such commodity at a lower rate in one section, community, or city, or any portion thereof, than such person, firm, or corporation, foreign or domestic, charges for such commodity in another section, community, or city, after making due allowance for the difference, if any, in the grade or quality and in the cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

2. Any person, firm, company, association or corporation, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred dollars, nor more than five thousand dollars for each offense, or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

SECTION 1791n—10. 1. Any person, firm, company, association or corporation, foreign or domestic, doing business in this state and engaged in the business of collecting or buying any product, commodity or property of any kind, that shall intentionally, for the purpose of injuring or destroying the business or trade of a competitor in any

locality, or to prevent competition by any person who in good faith intends or attempts to engage in such business, discriminate between the different sections, communities, or cities of this state, or between persons, firms, associations or corporations in any locality, by buying any product, commodity or property of any kind, and paying therefor a higher rate or price in one section, community, or city, or to any person, firm, association or corporation than is paid for the same kind of product, commodity or property by said person, firm, company, association or corporation, foreign or domestic, in another section, community or city, or to another person, firm, association or corporation, after making due allowance for the difference, if any, in the grade or quality and in the actual cost of the transportation from the point where the same is purchased to the market where it is sold, or intended to be sold, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

2. Any person, firm, company, association or corporation, and any officer, agent or receiver of any firm, company, association or corporation, or any member of the same, or any individual violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than two hundred dollars nor more than five thousand dollars for each offense, or by imprisonment in the county jail not to exceed one year, or by both such fine and imprisonment.

SECTION 1791n—11. The attorney general shall institute, manage, control, and direct, by himself, his deputy or any of his assistants, in the proper county, all prosecutions for violations of sections 1791n—9 and 1791n—10 and for such purpose shall have and exercise all powers conferred upon district attorneys in such cases. It shall be the duty of the district attorney in the county in which any such prosecution may be instituted or pending to cooperate with and assist the attorney general in such prosecution.

SECTION 1791n—12. If complaint shall be made to the attorney general that any corporation is guilty of unfair discrimination, as defined by the provisions of section 1791n—9 or 1791n—10, he shall investigate such complaint and for that purpose he may subpoena witnesses, administer oaths, take testimony and require the production of books or other documents, and, if in his opinion



sufficient grounds exist therefor, he may prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit of such corporation, as the case may be, and to permanently enjoin such corporation from doing business in this state, and if in such action the court shall find that such corporation is guilty of unfair discrimination, as defined by the provisions of said section 1791n—9 or 1791n—10, such court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this state.

SECTION 2. This act shall take effect and be in force from and after its passage and publication. (Chapter 165, Acts, 1913.)

#### COURT DECISIONS.

National Distilling Co. v. Cream City Importing Co., 86 Wis., 352.

Hawarden v. Youghioghenny & L. Coal Co., 111 Wis., 545; 55 L. R. A., 828.

Bratt v. Swift, 99 Wis., 579; 75 N. W., 411.

Rubber Tire Wheel Co. v. Milwaukee Rubber Works Co., 142 Fed., 531.



## WYOMING.

### CONSTITUTION.

ART. X, SEC. 6. No corporation shall have power to engage in more than one general line or department of business, which line of business shall be distinctly specified in its charter of incorporation.

### STATUTES.

Any person, firm, or corporation, foreign or domestic, doing business in the State of Wyoming and engaged in the production, manufacture or distribution of any commodity in general use, that shall, intentionally, for the purpose of destroying competition, discriminate between different sections, communities or cities of this state, by selling such commodity at a lower rate in one section, community or city, or any portion thereof, than is charged for such commodity in another section, community or city, after equalizing the distance from the point of production, manufacture or distribution and freight rates therefrom, shall be deemed guilty of unfair discrimination; provided, however, that this act shall not apply to any case where by reason of different railroad rates or other natural things in favor of any manufacturer or dealer of goods of this or another state such manufacturer or dealer sells at a different price than he does in another, in order to meet the competitive rates or other natural things in favor of such other manufacturer or dealer; provided, further, that this act shall not apply to any case where any manufacturer of or dealer in goods manufactured or produced in this state sells products in one place cheaper than in another to meet upon the same or more favorable basis any competition from foreign states, or this state; provided, further, that this act shall not prevent the sale of goods at proper commercial discount customary in the sale of such particular goods. (L. 1911, c. 62, Sec. 1.)

If complaint shall be made to the attorney-general of the state of Wyoming, or the county and prosecuting attorney of any county thereof, that any corporation, chartered in this state or any foreign corporation, doing business in this state by virtue of compliance with the laws thereof, or any person or firm of persons doing business in this state, is guilty of unfair discrimination, within the terms of this act, it shall be the duty of the attorney-general, and the county and prosecuting attorneys of this state to institute an inquiry as to such discrimination, giving to the party complained against, notice and reasonable opportunity to be heard, and if in the judgment of such prosecuting officers, or either of them, any corporation, foreign or domestic, or any person or firm of persons shall have been guilty of unfair discrimination, within the terms of this act, it shall be their duty to institute quo warranto proceeding, to forfeit the charter of said domestic corporation, or if a foreign corporation to procure an order of court to cause the permit of said corporation to do business in this state, immediately forfeited. (Id., Sec. 2.)

If after the revocation of such charter, in the case of domestic corporation; or if its permit, if it be a foreign corporation, any corporation shall continue or attempt to do business in the State of Wyoming, it shall be the duty of the attorney-general, by a proper suit, in the name of the State of Wyoming to oust such corporation from all business of every kind and character in said State of Wyoming. (Id., Sec. 3.)

Any person, firm or corporation violating the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall forfeit to the State of Wyoming the sum of not less than two hundred dollars for each and every violation of this act. Said sum to be recovered by a suit, in the name of the State of Wyoming, in any court of competent jurisdiction, by the attorney-general. (Id., Sec. 4.)

Nothing in this act shall be construed as repealing any other act or part of an act, but the remedies herein provided shall be cumulative to all other remedies provided by law. (Id., Sec. 5.)

# LAWS ON TRUSTS AND MONOPOLIES.

## FOREIGN COUNTRIES.<sup>1</sup>

---

### AUSTRALIA.

#### THE AUSTRALIAN INDUSTRIES PRESERVATION ACT, 1906.

[As amended by the acts of 1907, 1909, and 1910.]

AN ACT For the preservation of Australian industries, and for the repression of destructive monopolies.

[Assented to Sept. 24, 1906.]

*Be it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:*

#### PART I.—*Preliminary.*

1. This act may be cited as the Australian industries preservation act, 1906–1910.

2. This act is divided into parts as follows: Part I, preliminary; Part II, repression of monopolies; Part III, prevention of dumping.

3. In this act, unless the contrary intention appears—

“Commercial trust” includes a combination, whether wholly or partly within or beyond Australia, of separate and independent persons (corporate or unincorporate), whose voting power or determinations are controlled or controllable by (a) the creation of a trust as understood in equity, or of a corporation wherein the trustees or corporation hold the interests, shares, or stock of the constituent persons; or (b) an agreement; or (c) the creation of a board of management or its equivalent; or (d) some similar means; and includes any division, part, constituent person, or agent of a commercial trust.

“Inadequate remuneration for labor” includes inadequate pay or excessive hours or any terms or conditions of labor or employment unduly disadvantageous to workers.

---

<sup>1</sup> Acknowledgment of indebtedness is made to Fred. A. Johnson.

“Person” includes corporation and firm and a commercial trust.

“The comptroller general” means the comptroller general of customs.

“Answer questions” means that the person on whom the obligation of answering questions is cast shall, to the best of his knowledge, information, and belief, truly answer all questions on the subject mentioned that the comptroller general or the person named by him shall ask.

“Produce documents” means that the person on whom the obligation to produce documents is cast shall, to the best of his power, produce to the comptroller general or to the person named by him all documents relating to the subject matter mentioned.

## PART II.—*Repression of monopolies.*

4. (1) Any person who, either as principal or as agent, makes or enters into any contract, or is or continues to be a member of or engages in any combination in relation to trade or commerce with other countries or among the States—(a) in restraint of or with intent to restrain trade or commerce; or (b) to the destruction or injury of or with intent to destroy or injure by means of unfair competition any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers, is guilty of an offense.

Penalty, £500, or, in the case of a continuing offense, £500 for each day during which the offense continues.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

(3) It shall be a defense to a proceeding for an offense under paragraph (a) of subsection (1) of this section, and an answer to an allegation that a contract was made or entered into in restraint of, or with intent to restrain, trade or commerce, if the party alleged to have contravened this section proves (a) that the matter or thing alleged to have been done in restraint of, or with intent to restrain, trade or commerce was not to the detriment of the public; and (b) that the restraint of trade or commerce effected or intended was not unreasonable.

(Section 5 repealed.)

6. (1) For the purposes of section 4 and section 10 of this act, unfair competition means competition which is

unfair in the circumstances; and in the following cases the competition shall be deemed to be unfair unless the contrary is proved:

(a) If the defendant is a commercial trust.

(b) If the competition would probably or does in fact result in an inadequate remuneration for labor in the Australian industry.

(c) If the competition would probably or does in fact result in an inadequate remuneration for labor in the lian industry or throwing workers out of employment.

(d) If the defendant, with respect to any goods or services which are the subject of the competition, gives, offers, or promises to any person any rebate, refund, discount, or reward upon condition that that person deals, or in consideration of that person having dealt, with the defendant to the exclusion of other persons dealing in similar goods or services.

(2) In determining whether the competition is unfair, regard shall be had to the management, the processes, the plant, and the machinery employed or adopted in the Australian industry affected by the competition being reasonably efficient, effective, and up to date.

7. (1) Any person who monopolizes or attempts to monopolize, or combines or conspires with any other person to monopolize, any part of the trade or commerce with other countries or among the States, is guilty of an indictable offense.

Penalty, £500 for each day during which the offense continues, or one year's imprisonment, or both; or, in the case of a corporation, £1,000 for each day during which the offense continues.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

(3) The attorney general may elect, instead of proceeding by indictment for an offense against this section, to institute proceedings in the high court by way of civil action for the recovery of the pecuniary penalties for the offense; in which case the action shall be tried before a justice of that court without a jury.

7A. (1) Any person who, in relation to trade or commerce with other countries or among the States, either as principal or agent, in respect of dealings in any goods or services gives, offers, or promises to any other person any rebate, refund, discount, concession, or reward for the reason, or upon the condition, express or implied, that the

latter person (*a*) deals, or has dealt, or will deal, or intends to deal exclusively with any person, either in relation to any particular goods or services or generally; or (*b*) deals, or has dealt, or will deal, or intends to deal exclusively with members of a commercial trust, either in relation to any particular goods or services or generally; or (*c*) does not deal, or has not dealt, or will not deal, or does not intend to deal with certain persons, either in relation to any particular goods or services or generally; or (*d*) is or becomes a member of a commercial trust; is guilty of an offense.

Penalty, £500.

(2) Every contract made or entered into in contravention of this section shall be absolutely illegal and void.

(3) It shall be a defense to a prosecution under this section, and an answer to an allegation that a contract was made or entered into in contravention of this section, if the party alleged to have contravened this section proves that the matter or thing alleged to have been done in contravention of this section was not to the detriment of the public, and did not constitute competition which was unfair in the circumstances, and was not destructive of or injurious to any Australian industry.

7B. Any person who, in relation to trade and commerce with other countries or among the States, either as principal or agent, refuses either absolutely or except upon disadvantageous conditions to sell or supply to any other person any goods or services for the reason that the latter person (*a*) deals, or has dealt, or will deal, or intends to deal with any person; or (*b*) deals, or has dealt, or will deal, or intends to deal with persons who are not members of a commercial trust; or (*c*) is not a member of a commercial trust; is guilty of an offense.

Penalty, £500.

(Section 8 repealed.)

9. Whoever aids, abets, counsels, or procures, or by act or omission is in any way, directly or indirectly, knowingly concerned in or privy to (*a*) the commission of any offense against this part of this act; or (*b*) the doing of any act outside Australia which would, if done within Australia, be an offense against this part of this act; shall be deemed to have committed the offense.

Penalty, £500.

10. (1) The attorney general, or any person thereto authorized by him, may institute proceedings in the high



court to restrain by injunction after hearing and determining the merits and not by way of interlocutory order the carrying out of any contract made or entered into after the commencement of this act or any combination which (a) is in restraint of trade or commerce; or (b) is destructive or injurious, by means of unfair competition, to any Australian industry the preservation of which is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers.

Provided, that this section shall only apply to contracts or combinations in relation to commerce with other countries or among the States.

(2) On the conviction of any person for an offense under this part of this act the justice before whom the trial takes place shall, upon application by or on behalf of the attorney general or any person thereto authorized by him, grant an injunction restraining the convicted person and his servants and agents from the repetition or continuance of the offense of which he has been convicted.

10A. (1) Any person who does any act or thing in disobedience of an injunction granted under this part of this act shall be guilty of an offense.

Penalty, £500 for each day during which the offense continues.

(2) This section shall not be deemed to derogate from the power of the high court, apart from this section, to enforce obedience to the injunction.

11. (1) Any person who is injured in his person or property by any other person, by reason of any act or thing done by that other person in contravention of this part of this act, or by reason of any act or thing done in contravention of any injunction granted under this part of this act, may, in the high court, before a justice, without a jury, sue for and recover treble damages for the injury.

(2) No person shall, in any proceeding under this section, be excused from answering any question put either viva voce or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may criminate or tend to criminate him; but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury.

12. The jury panel for the trial of any offense against this part of this act, or for the trial of any action or

issue under this part of this act, shall be taken from the list of special jurors (if any) in the State or part of the Commonwealth in which the trial takes place.

13. (1) Proceedings for the recovery of pecuniary penalties for offenses against this part of this act (other than indictable offenses or offenses against section 15B, section 15C, or section 15E) shall be instituted in the high court by way of civil action and shall be tried before a justice of that court without a jury.

(2) Any offense against this part of this act committed by the person who has previously been convicted of any offense against this part of this act shall be an indictable offense, punishable on conviction by a penalty not exceeding £500 or imprisonment for any term not exceeding one year, or both; in the case of a corporation by a penalty not exceeding £500.

14. (1) No proceeding for an indictable offense or for the recovery of penalties shall be instituted under this part except by the attorney general or some person authorized by him.

(2) No other proceeding shall be instituted under this part without the written consent of the attorney general.

14A. In any proceeding for an offense against this part of this act, any indictment, information, statement of claim, conviction, warrant, or other process shall suffice if the offense is set forth as nearly as may be in the words of this act.

14B. No person shall, in any proceeding for an offense against this part of this act, be excused from answering any question, put either viva voce or by interrogatory, or from making any discovery of documents, on the ground that the answer or discovery may tend to criminate him or make him liable to a penalty; but his answer shall not be admissible in evidence against him in any civil or criminal proceeding other than a proceeding for an offense against this act or a prosecution for perjury.

14C. In any proceeding for an offense against this part of this act, wherein a combination or conspiracy or attempted combination or conspiracy in contravention of this act is alleged, any book, document, paper, or writing containing (a) any minute, note, record, or memorandum of any proceeding at any meeting of the persons or any of the persons alleged to have been parties or privy to the combination, conspiracy, or attempt; or (b) any entry purporting to be a copy of or extract from any such book,

document, paper, or writing, shall, upon proof that it was produced by or came from the custody of those persons, or any of them, or of a responsible officer or a representative of those persons, or any of them, (1) be admissible in evidence against those persons; and (2) be evidence that the matter and things thereby appearing to have been done by those persons, or any of them, were so done, and that any person thereby appearing to have been present at the meeting was so present.

14D. In any proceeding for an offense against this part of this act, any book, letter, document, paper, or writing, or anything purporting to be a copy of, or extract from, any book, letter, document, paper, or writing, containing any reference to any matter or thing alleged to be done in contravention of this act, shall, upon proof that it was produced by or came from the custody of a person charged with the offense, or a responsible officer or a representative of that person (a) be admissible in evidence against that person; and (b) be evidence of the matters and things thereby appearing, and that the book, letter, document, paper, or writing (or, in the case of a copy, that the original thereof) was written, signed, dispatched, and received by the persons by whom it purports to have been written, signed, dispatched, and received, and that any such copy or extract is a true copy of, or extract from, the original of or from which it purports to be a copy or extract.

15. (1) Any person party to a contract or member of a combination or in any way concerned in carrying out the contract or the objects of the combination may (a) lodge with the attorney general a statutory declaration by himself, or in the case of a corporation by some one approved of in that behalf by the attorney general, setting forth truly, fully, and completely the terms and particulars of the contract, or the purposes, objects, and terms of agreement or constitution of the combination, as the case may be, and an address in Australia to which notices may be sent by the attorney general; and (b) publish the statutory declaration in the Gazette.

(2) The attorney general may at any time send notice to the person above mentioned (hereinafter called the declarant), to the address mentioned in the statutory declaration, that he considers the contract or combination likely to restrain trade or commerce to the detriment of

the public, or to destroy or injure an Australian industry by unfair competition.

(3) In any proceeding against the declarant in respect of any offense against section 4 of this act, alleged to have been committed by him in relation to the contract or combination after the time the statutory declaration has been lodged and published, and before any notice as aforesaid has been sent to him by the attorney general, it shall be deemed (but as regards the declarant only and not as regards any other person) that the declarant had no intent to contravene the provisions of the section if he proves that the statutory declaration contains a true, full, and complete statement of the terms and particulars of the contract or the purposes, objects, and terms of agreement or constitution of the combination, as the case may be, at the date of the statutory declaration and at the date of the alleged offense.

15A. In any prosecution for an offense against sections 4, 7, 7A, 7B, or 9 of this act the averments of the prosecutor contained in the information, declaration, or claim shall be deemed to be proved in the absence of proof to the contrary, but so that (a) the averment in the information of intent shall not be deemed sufficient to prove such intent; and (b) in all proceedings for an indictable offense the guilt of the defendant must be established by evidence.

15B. (1) If the comptroller general believes that an offense has been committed against this part of this act, or if a complaint has been made in writing to the comptroller general that an offense has been committed against this part of this act and the comptroller general believes that the offense has been committed, he may, by writing under his hand, require any person whom he believes to be capable of giving any information in relation to the alleged offense to answer questions and to produce documents to him or to some person named by him in relation to the alleged offense.

(2) No person shall refuse or fail to answer questions or produce documents when required to do so in pursuance of this section.

Penalty, £50.

(3) The comptroller general or any person to whom any documents are produced in pursuance of this section may take copies of or extracts from those documents.

(4) No person shall be excused from answering any questions or producing any documents when required to do so under this section on the ground that the answer to the question or the production of the document might tend to criminate him or make him liable to a penalty; but his answer shall not be admissible in evidence against him in any civil or criminal proceeding other than a proceeding for an offense against this part of this act.

15C. (1) Whenever a complaint on oath has been made in writing to the comptroller general that any person or any foreign corporation or any trading or financial corporation formed within the Commonwealth has been guilty of any offense against this part of this act, the comptroller general, if he believes the complaint to be well founded, may, by writing, require any such person or foreign corporation or trading or financial corporation or any member, officer, or agent of any such corporation, to produce and hand over to him or to some person appointed by him in writing all books and documents relating to the subject matter of the complaint and all books any documents of any kind whatsoever wherein any entry or memorandum appears in any way relating to the subject matter of the complaint.

(2) Every person or foreign corporation or trading or financial corporation required by the comptroller general as aforesaid to produce to him or to some person appointed by him in writing any books or documents shall forthwith produce and hand over such books or documents accordingly.

Penalty, £100.

(3) The comptroller general or any person appointed by him in writing may inspect all books and documents produced in pursuance of this section and may make copies of or extracts from those books or documents.

15D. The comptroller general may impound or retain any book or document produced to him or to any person so appointed by him in pursuance of the preceding section, but the person or corporation otherwise entitled to such book or document shall in lieu thereof be entitled to a copy certified as correct by the comptroller general, and such certified copy shall be receivable in all courts as evidence and of equal validity with the original. And until such certified copy is supplied the comptroller general may at such times and places as he shall think proper permit such person, or in the case of a corporation any

- person appointed for the purpose by the corporation, to inspect and take extracts from the books or documents so impounded or retained.

15E. No person shall disclose any information gained by him in the exercise of the powers conferred by the last three preceding sections except (a) to the attorney general or some person authorized by him; (b) to the comptroller general; (c) when giving evidence in any proceeding for an offense against this part of this act.

Penalty, £50.

### PART III.—*Prevention of dumping.*<sup>1</sup>

16. In this part of this act—

“Justice” means a justice of the high court.

“The comptroller general” means the comptroller general of customs.

“Imported goods” and “Australian goods” include goods of those classes, respectively, and all parts or ingredients thereof.

“Produced” includes manufactured, and “Producer” includes manufacturer.

“Trade” includes production of every kind.

“Industries” shall not include industries in which, in the opinion of the comptroller general or justice as the case may be, the majority of workers do not receive adequate remuneration or are subject to unfair terms or conditions of labor or employment.

17. Unfair competition has in all cases reference to competition with those Australian industries, the preservation of which, in the opinion of the comptroller general or a justice as the case may be, is advantageous to the Commonwealth, having due regard to the interests of producers, workers, and consumers.

18. (1) For the purposes of this part of this act, competition shall be deemed to be unfair, unless the contrary is proved, if (a) under ordinary circumstances of trade it would probably lead to the Australian goods being no longer produced or being withdrawn from the market or being sold at a loss unless produced at an inadequate remuneration for labor; or (b) the means adopted by the person importing or selling the imported goods are, in

<sup>1</sup> Acts of the Commonwealth of Australia, 1901. No. 6 of 1901—An act relating to the customs. (Assented to Oct. 3, 1901.) Part I—Introductory. 1. This act may be cited as the customs act of 1901. \* \* \* 50. No prohibited goods shall be imported. Penalty, £100.

the opinion of the comptroller general or a justice as the case may be, unfair in the circumstances; or (c) the competition would probably or does in fact result in an inadequate remuneration for labor in the Australian industry; or (d) the competition would probably or does in fact result in creating any substantial disorganization in Australian industry or throwing workers out of employment; or (e) the imported goods have been purchased abroad by or for the importer, from the manufacturer or some person acting for or in combination with him or accounting to him, at prices greatly below their ordinary cost of production where produced or market price where purchased; or (f) the imported goods are imported by or for the manufacturer or some person acting for or in combination with him or accounting to him, and are being sold in Australia at a price which is less than gives the person importing or selling them a fair profit upon their fair foreign market value, or their fair selling value if sold in the country of production, together with all charges after shipment from the place whence the goods are exported directly to Australia (including customs duty).

(2) In determining whether the competition is unfair regard shall be had to the management, the processes, the plant, and the machinery employed or adopted in the Australian industry affected by the competition being reasonably efficient, effective, and up to date.

19. (1) The comptroller general, whenever he has received a complaint in writing and has reason to believe that any person (hereinafter called the importer), either singly or in combination with any other person within or beyond the Commonwealth, is importing into Australia goods (hereinafter called imported goods) with intent to destroy or injure any Australian industry by their sale or disposal within the Commonwealth in unfair competition with any Australian goods, may certify to the minister accordingly.

(2) The certificate of the comptroller general shall specify (a) the imported goods; (b) the Australian industry and goods; (c) the importer; (d) the grounds or unfairness in the competition; (e) the name, address, and occupation of any person (not being an officer of the public service) upon whose information he may have acted.

(3) The comptroller general may add to his certificate a statement of such other facts as in his opinion ought to

be specified to give the importer fair notice of the matters complained of.

(4) The comptroller general shall, before making his certificate, give to the importer an opportunity to show cause why the certificate should not be made and furnish him with a copy of the complaint.

(5) On receipt of the certificate the minister may (a) by order in writing refer to a justice the investigation and determination of the question whether the imported goods are being imported with the intent alleged; and if so, whether the importation of the goods should be prohibited, either absolutely or subject to any specified conditions or restrictions or limitations; (b) notify in the Gazette that the question has been so referred; and (c) forward to the justice a copy of the certificate.

20. From the date of the Gazette notice until the publication in the Gazette of the determination of the question by the justice, goods, the subject of the investigation, shall not be imported unless the importer (a) gives to the minister a bond with such sureties as the minister approves, for such amount (not exceeding the true value of the goods for customs purposes) as the minister considers just and reasonable by way of precaution in the circumstances, and conditioned to be void if the justice determines the question in favor of the importer; or (b) gives such other security and complies with such other conditions as the minister approves; and those goods shall, if imported in contravention of this section, be deemed to be prohibited imports within the meaning of the customs act 1901, and the provisions of that act shall apply to the goods accordingly.

21. (1) The justice shall proceed to expeditiously and carefully investigate and determine the matter, and for the purpose of the proceeding shall have power to inquire as to any goods, things, and matters whatsoever which he considers pertinent, necessary, or material.

(2) For the purpose of the proceeding the justice shall sit in open court, and shall have all the powers of a justice in the exercise of the ordinary jurisdiction of the high court. He may, if he thinks fit and shall on the application of either party, state a case for the opinion of the full court upon any question of law arising in the proceeding. And he may, if he thinks fit at any stage of the proceeding, refer the investigation and determina-



tion of the matter to the full court, which shall in that case have all the powers and functions of a justice under this part of this act.

(3) The certificate of the comptroller general shall be prima facie evidence of facts by subsection (2) of section 19 of this act, required to be specified therein.

(4) In addition to the comptroller general and the importer the justice may, if he thinks fit, allow any person interested in importing imported goods to be represented at the investigation.

(5) The justice shall be guided by good conscience and the substantial merits of the case, without regard to legal forms or technicalities, or whether the evidence before him is in accordance with the law of evidence or not.

(6) No person shall in any proceeding before a justice be excused from answering any question or producing documents on the ground that the answer or production may criminate or tend to criminate him, but his answer shall not be admissible in evidence against him in any criminal proceeding other than a prosecution for perjury.

(7) The justice shall forward his determination to the minister.

(8) In the case of the following agricultural implements, plows of all kinds over 1½ hundredweight, tine harrows, disk harrows, grain drills, combined grain-seed and manure drills, land rollers, cultivators, chaff cutters, seed cleaners, stripper harvesters, and any other implement usually used in agriculture, the justice shall inquire into and determine the question whether the goods are being imported with the effect of benefiting the primary producers without unfairly injuring any other section of the community of the Commonwealth.

(9) The determination of the justice shall be final and conclusive and without appeal and shall not be questioned in any way.

22. (1) Upon the receipt of the determination of the justice the minister shall forthwith cause it to be published in the Gazette.

(2) If the justice determines that the imported goods are being imported with the intent alleged, and that their importation should be prohibited either absolutely or subject to any specified conditions or restrictions or limitations of any kind whatsoever (a) the determination when so published shall have the effect of a proclamation

under the customs act, 1901, prohibiting the importation of the goods either absolutely or subject to those conditions or restrictions or limitations as the case may be; and in that case the provisions of that act shall apply to goods so prohibited; and (b) the justice may by order reduce the amount recoverable under any bond given in pursuance of this part of this act to such sum as the importer satisfies him is reasonable and just in the circumstances.

23. The governor general may at any time, by proclamation, simultaneously with or subsequently to any prohibition under this part of this act, rescind in whole or in part the prohibition or any condition or restriction or limitation on importation imposed thereby.

24. In all cases of prohibition the determination of the justice, and any proclamation affecting the same, shall be laid before both houses of the Parliament within seven days after the publication in the Gazette, or, if the Parliament is not then sitting, within seven days after the next meeting of Parliament.

25. The justices of the high court or a majority of them may make rules of court not inconsistent with this act, for regulating the proceedings before a justice under this part of this act and for carrying this part of this act into effect.

26. (1) Any person who willfully (a) makes to the comptroller general or to any officer of customs any false statement in relation to any action or proceedings taken or proposed to be taken under this part of this act; or (b) misleads the comptroller general in any particular likely to affect the discharge of his duty under this act shall be guilty of an offense.

Penalty, £100 or 12 months' imprisonment.

(2) Any person convicted under the last preceding subsection may be ordered by the justice to whom a question is referred under this part of this act to pay the whole or part of the costs incurred by the importer in whose favor the question is determined.

## EXCISE TARIFF.

[No. 16 of 1906.]

AN ACT Relating to duties of excise.<sup>1</sup>

[Assented to Oct. 12, 1906.]

*Be it enacted by the King's Most Excellent Majesty, the Senate and the House of Representatives of the Commonwealth of Australia, as follows:*

1. This act may be cited as the excise tariff, 1906.

Short title.

2. Duties of excise shall on and from the 1st day of January, 1907, be imposed on the dutiable goods specified in the schedule at the rates specified in the said schedule.

Excise duties on agricultural machinery.

*Provided*, That this act shall not apply to goods manufactured by any person in any part of the Commonwealth under conditions as to the remuneration of labor which (a) are declared by resolution of both houses of the Parliament to be fair and reasonable; or (b) are in accordance with an industrial award under the Commonwealth conciliation and arbitration act, 1094; or (c) are in accordance with the terms of an industrial agreement filed under the Commonwealth conciliation and arbitration act, 1904; or (d) are, on an application made for the purpose to the president of the Commonwealth court of conciliation and arbitration, declared to be fair and reasonable by him or by a judge of the supreme court of a State or any person or persons who compose a State industrial authority to whom he may refer the matter.

## THE SCHEDULE.

*Excise duties.*

| Dutiable goods.   | Duties. |
|---|---------|
| FIXED RATES.  |         |
| Stripper harvesters.....each.....                                   | £6      |
| Strippers.....do.....   | £3      |
| Metal parts of stripper harvesters and strippers.....per pound..... | 7s. 8d. |
| AD VALOREM RATES.   |         |
| Stump-jump plows.....per cent.....                                  | 12½     |
| Disk cultivators.....do.....  |         |
| Winnowers, horse and other power.....do.....                        |         |
| Combined corn sheller, husker, and hagger.....do.....               |         |
| Combined corn sheller and husker.....do.....                        | 12½     |
| Drills:   |         |
| Fertilizer.....do.....  |         |
| Seed.....do.....  |         |
| Grain.....do.....   |         |
| And attachments thereto.....do.....                                 |         |

<sup>1</sup> The act relating to agricultural machinery (No. 16 of 1906) was declared unconstitutional by the high court in July, 1908.

*Excise duties—Continued.*

| Dutiable goods.                   | Duties     |
|-----------------------------------|------------|
| AD VALOREM RATES—continued.       |            |
| Plows, other.....                 | per cent.. |
| Plowshares.....                   | do.....    |
| Harrows.....                      | do.....    |
| Chaff cutters and horse gear..... | do.....    |
| Cultivators, other than disk..... | do.....    |
| Scarifiers.....                   | do.....    |
| Plow moldboards.....              | do.....    |
| Corn shellers.....                | do.....    |
| Corn huskers.....                 | do.....    |

10

## EXEMPTIONS.

Hand-worked rakes and plows combined.  
 Hay tedders.  
 Maize harvesters.  
 Maize binders.  
 Maize planters.  
 Moldboard plates in the rough and not cut into shape.  
 Potato sorters.  
 Potato raisers or diggers.

(Commonwealth Acts: Australia, vol. 5, 1906, No. 16, p. 59.)

## THE PATENTS ACT 1903.

[No. 21 of 1903. As amended by the patents act 1906 (No. 19 of 1906), and by the patents act 1909 (No. 17 of 1909).]

## AN ACT Relating to patents of inventions.

[Assented to Oct. 22, 1903.]

PART V.—*Working of patents and compulsory licenses.*

Compulsory  
 licenses. 2  
 Edw. 7, c. 34,  
 s. 2.

87. (1) Any person interested may, after the expiration of two years from the granting of the patent, present a petition to the commissioner alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied and praying for the grant of a compulsory license, or, in the alternative, for the revocation of the patent.

(2) The commissioner shall consider the petition, and if the parties do not come to an arrangement between themselves, the commissioner, if satisfied that a prima facie case has been made out, shall refer the petition to the high court or the supreme court, and if the commissioner is not so satisfied he may dismiss the petition.

(3) Where any such petition is referred by the commissioner to the high court or the supreme court, and it is proved to the satisfaction of the court that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered, by rule or order, to grant licenses on such terms as the said court thinks just, or if the court is of

opinion that the reasonable requirements of the public will not be satisfied by the grant of licenses the court may order the revocation of the patent.

Provided, that no order of revocation shall be made before the expiration of three years from the date of the patent or if the patentee gives satisfactory reasons for his default.

(4) On the hearing of any petition under this section the patentee, and any person claiming an interest in the patent as exclusive licensee or otherwise, shall be made parties to the proceedings, and the commissioner shall be entitled to appear and be heard.

\* \* \* \* \*

(6) For the purposes of this section the reasonable requirements of the public shall not be deemed to have been satisfied (a) if, by reason of the default of the patentee (1) to manufacture to an adequate extent and supply on reasonable terms the patented article or any parts thereof, which are necessary for its efficient working, or (2) to carry on the patented process to an adequate extent, or (3) to grant licenses on reasonable terms; any existing trade or industry, or the establishment of any new trade or industry, in Australia is unfairly prejudiced; or the demand for the patented article or the article produced by the patented process is not reasonably met; or (b) if any trade or industry in Australia is unfairly prejudiced by the conditions attached by the patentee, before or after the commencement of this subsection, to the purchase, hire, or use of the patented article, or to the using or working of the patented process.

Subsec. (5) omitted; No. 17, 1909, s. 14. 7 Edw. 7, c. 29, s. 24 (5).

Substituted by No. 17, 1909, s. 14.

(7) A rule or order directing the grant of any license under this section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a license and made between the parties to the proceeding.

87a. (1) At any time not less than four years after the date of a patent, and not less than two years after the commencement of this section, any person may apply to the high court or the supreme court for an order declaring that the patented article or process is not manufactured or carried on to an adequate extent in the Commonwealth.

Provision where patent is not worked to an adequate extent in the Commonwealth.

(2) If, on the hearing of the application, the court is satisfied that the patented article or process is manufactured or carried on exclusively or mainly outside the

Inserted by No. 17, 1909, s. 15

Commonwealth, then, subject to the provision of this section, and unless the patentee proves that the article or process is manufactured or carried on to an adequate extent in the Commonwealth, or gives satisfactory reasons why the articles or process is not so manufactured or carried on, it shall make the order applied for, to take effect either (a) forthwith or (b) at the expiration of such reasonable time as is specified in the order, unless in the meantime it is shown to the satisfaction of the court that the patented article or process is manufactured or carried on to an adequate extent in the Commonwealth:

Provided, that no such order shall be made which is at variance with any treaty, convention, arrangement, or engagement with any foreign country or part of the King's dominions.

(3) If, within the time specified in the order, the patented article or process is not manufactured or carried on to an adequate extent in the Commonwealth, but the patentee gives satisfactory reasons why it is not so manufactured or carried on, the court may make a further order extending the time so specified for any specified time not exceeding 12 months.

(4) From and after the time when an order under subsection (2) of this section takes effect the patent shall not be deemed to be infringed by the manufacture or carrying on in the Commonwealth of the patented article or process or by the vending within the Commonwealth of the patented article made within the Commonwealth.

(5) If at any time after the making of an order under subsection (2) of this section the court is satisfied that the patented article or process is not manufactured or carried on in the Commonwealth by any other person than the patentee, and that the patentee is manufacturing it or carrying it on to an adequate extent in the Commonwealth, the court may in its discretion, if it thinks it just so to do, revoke the order, which shall thenceforth cease to have effect.

(6) In any case in which the court is empowered by this section to make an order under subsection (2) thereof, it may, in its discretion, if it thinks it just so to do, instead of making such an order, order the patentee to grant a compulsory license to the applicant on such terms as the court thinks just.

(7) In any proceedings under this section the court may make such order as to costs as it thinks just, and

may order the applicant to give such security as it thinks just for the costs of the proceedings and of any appeal therefrom, and in default of such security being given within the time specified by the order the proceedings or appeal shall be deemed to be abandoned.

87b. (1) It shall not be lawful in any contract made after the commencement of this section in relation to the sale or lease of, or license to use or work, any article or process protected by patent, to insert a condition the effect of which would be (a) to prohibit or restrict the purchaser, lessee, or licensee from using any article or class of articles or process, whether patented or not, supplied or owned by any person other than the seller, lessor, or licensor, or his nominees; or (b) to require the purchaser, lessee, or licensee to acquire from the seller, lessor, or licensor, or his nominees, any article or class of articles not protected by the patent; and any such condition shall be null and void:

Avoidance of certain conditions attached to the sale, etc., of patented articles. 7 Edw. 7, c. 29, s. 38. Inserted by No. 17, 1909, s. 15.

Provided, that this subsection shall not apply if (1) the seller, lessor, or licensor proves that, at the time the contract was entered into, the purchaser, lessee, or licensee had the option of purchasing the article or obtaining a lease or license on reasonable terms, without any such condition; and (2) the contract entitles the purchaser, lessee, or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing, and on payment in compensation for such relief in the case of a purchase of such sum, or in the case of a lease or license of such rent or royalty for the residue of the term of the contract, as may be fixed by an arbitrator appointed by the minister.

(2) Any contract relating to the lease of or license to use or work any patented article or patented process, whether made before or after the commencement of this section, may at any time after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party.

(3) Any contract made before the commencement of this section relating to the lease of or license to use or work any patented article or process, and containing any condition which, had the contract been made after the

commencement of this section, would by virtue of this section have been null and void, may, at any time before the contract is determinable under the last preceding subsection, and notwithstanding anything in the same or any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party.

(4) Where under either of the two last preceding subsections any notice is given determining a contract made before the commencement of this section, the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the minister.

(5) The insertion by the patentee in a contract, made after the commencement of this section, of any condition which by virtue of this section is null and void, shall be available as a defense to an action for infringement of the patent, to which the contract relates, brought while that contract is in force.

(6) Nothing in this section shall (a) affect any condition in a contract whereby a person is prohibited from selling any goods other than those of a particular person; or (b) be construed as validating any contract which would, apart from this section, be invalid; or (c) affect any right of determining a contract or condition in a contract exercisable independently of this section; or (d) affect any condition in a contract for the lease of or license to use a patented article, whereby the lessor or licensor reserves to himself or his nominees the right to supply such new parts of the patented article as may be required to put or keep it in repair.

(Australia, Commonwealth Acts, 1909, vol. 8, The Patents Act, Pt. V, pp. 269 to 273.)



## CANADA.

### CRIMINAL LAW OF CANADA RELATIVE TO RESTRAINTS OF TRADE AND COMPETITION.

#### OFFENSES CONNECTED WITH TRADE AND BREACHES OF CONTRACT.

496. A conspiracy in restraint of trade is an agreement between two or more persons to do or procure to be done any unlawful act in restraint of trade. (55-56 V, c. 29, s. 516.) Conspiracy in restraint of trade.

497. The purposes of a trade union are not, by reason merely that they are in restraint of trade, unlawful within the meaning of the last preceding section. (55-56 V, c. 29, s. 517.) Acts in restraint not unlawful.

498. Every one is guilty of an indictable offense and liable to a penalty not exceeding \$4,000 and not less than \$200, or to two years' imprisonment, or, if a corporation, is liable to a penalty not exceeding \$10,000 and not less than \$1,000, who conspires, combines, agrees, or arranges with any other person, or with any railway, steamship, steamboat, or transportation company— Penalty for conspiracy.

(a) To unduly limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any article or commodity which may be subject of trade or commerce; or, To limit transportation facilities.

(b) To restrain or injure trade or commerce in relation to any such article or commodity; or, Restrain commerce.

(c) To unduly prevent, limit, or lessen the manufacture or production of any such article or commodity, or to unreasonably enhance the price thereof; or, Lessen manufacturing.

(d) To unduly prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, or supply of any such article or commodity, or in the price of insurance upon person or property. Lessen competition.

2. Nothing in this section shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees. Saving. (63-64 V, c. 46, s. 3.)

(Revised Statutes of Canada, 1906, Vol. III, chap. 146, secs. 496-498, p. 2549.)

#### CANADIAN LEGISLATION CONCERNING PATENTS.

Conditional  
validity of cer-  
tain patents  
granted before  
Aug. 13, 1903.

42. The validity of any patent granted before the 13th day of August, 1903, shall not be impeached, nor shall such patent be deemed to have lapsed or expired by reason of the failure of the patentee to construct or manufacture the patented invention, if the patentee within the period of two years from the date of the patent allowed for such construction or manufacture, or within an authorized extension of that period, became, and at all times thereafter continued to be, ready either to furnish the patented invention himself or to license the right of using it, on reasonable terms, to any person desiring to use it, and if the patentee, or his legal representatives, within six months from the 13th day of August, 1903, had—

(a) Commenced, and after such commencement continuously carried on in Canada, the construction or manufacture of the patented invention in such manner as to enable any person desiring to use it to obtain it, or cause it to be made for him, at a reasonable price, at some manufactory or establishment for making or constructing it in Canada; or,

(b) Applied for and thereupon obtained an order of the commissioner making the patent subject to the condition hereinafter provided for authorizing application for the issue of licenses to make, construct, use, and sell the patented invention. (3 E. VII., c. 46, s. 10.)

Rights of  
third persons  
saved.

43. In the case of any patent which before the 13th day of August, 1903, had become void or the validity of which might have been impeached, and which was revived or protected from impeachment by any provision of the act, passed in the third year of His Majesty's reign, chapter 46, entitled "An act to amend the patent act," or which, by reason of any such provision, is to be deemed not to have elapsed or expired, any person who had, between the time when such patent became void or the ground for such impeachment arose, and the 13th day of August, 1903, aforesaid, commenced to manufacture, use, or sell in Canada the invention covered by such patent, may continue to manufacture, use, or sell it in as full and ample a measure as if such revival or protection from

impeachment had not been effected; and, in case any person had, before the 13th day of August aforesaid, contracted with the owner of the patent for the right to manufacture, use, or sell such invention in Canada, the contract shall be deemed to have remained in full force and effect, notwithstanding that the patent had become void as aforesaid, unless the person who had so contracted with such owner can show that in the meantime, by reason or on the faith of such invalidity or lapsing, he has materially altered his position with respect to such invention, and that the revival of such contract would cause him damage. (3 E. VII., c. 46, s. 14.)

44. On the application of the applicant for a patent previous to the issue thereof, or on the application within six months after the issue of a patent of the patentee or his legal representatives, the commissioner, having regard to the nature of the invention, may order that such patent instead of being subject to the condition with respect to the construction and manufacture of the patented invention hereinbefore provided, shall be subject to the following conditions, that is to say:

(a) Any person, at any time while the patent continues in force, may apply to the commissioner by petition for a license to make, construct, use, and sell the patented invention, and the commissioner shall, subject to general rules which may be made for carrying out this section, hear the person applying and the owner of the patent, and, if he is satisfied that the reasonable requirements of the public in reference to the invention have not been satisfied by reason of the neglect or refusal of the patentee or his legal representatives to make, construct, use, or sell the invention, or to grant licenses to others on reasonable terms to make, construct, use, or sell the same, may make an order under his hand and the seal of the Patent Office requiring the owner of the patent to grant a license to the person applying therefor in such form and upon such terms as to the duration of the license, the amount of the royalties, security for payment, and otherwise as the commissioner, having regard to the nature of the invention and the circumstances of the case, deems just;

(b) The commissioner may, if he thinks fit, and shall on the request of either of the parties to the proceedings, call in the aid of an assessor, specially qualified, and hear the case wholly or partially with his assistance;

Conditions which may be substituted.

Application by any person to use patent.

Order of commissioner.

Assessors.

More than  
one license  
may be granted.

(c) The existence of one or more licenses shall not be a bar to an order by the commissioner for or to the granting of a license on any application under this section; and

Forfeiture of  
patent for  
refusal to grant  
license.

(d) The patent and all rights and privileges thereby granted shall cease and determine and the patent shall be null and void if the commissioner makes an order requiring the owner of the patent to grant any license and the owner of the patent refuses or neglects to comply with such order within three calendar months next after a copy of it is addressed to him or to his duly authorized agent. (3 E. VII, c. 46, s. 7.)

References to  
the exchequer  
court.

45. Any question which arises as to whether a patent or any interest therein has or has not become void under any of the provisions of the seven last preceding sections of this act may be adjudicated upon by the exchequer court of Canada, which court shall have jurisdiction to decide any such questions upon information in the name of the attorney general of Canada or at the suit of any person interested; but this section shall be not held to take away or affect the jurisdiction which any court other than the exchequer court of Canada possesses. (3 E. VII, c. 46, s. 8.)

Jurisdiction  
of other courts.

(Revised Statutes of Canada, 1906, Vol. II, chap. 69, secs. 42, 43, 44, and 45.)

#### CONCERNING BOOKS.

If copyright  
owner licenses  
reproduction in  
Canada.

28. If a book as to which there is subsisting copyright under this act has been first lawfully published in any part of His Majesty's dominions, other than Canada, and if it is proved to the satisfaction of the minister that the owner of the copyright so subsisting and of the copyright acquired by such publication has lawfully granted a license to reproduce in Canada, from movable or other types, or from stereotype plates, or from electroplates, or from lithograph stones, or by any process for facsimile reproduction, an edition or editions of such book designed for sale only in Canada, the minister may, notwithstanding anything in this act, by order under his hand, prohibit the importation into Canada, except with the written consent of the licensee, of any copies of such book printed elsewhere; provided that two such copies may be specially imported for the bona fide use of any public free library or any university or college library, or for the

Minister may  
prohibit impor-  
tation.

Proviso.

library of any duly incorporated institution or society for the use of the members of such institution or society. (63-64 V, c. 25, s. 1.)

29. The minister may at any time in like manner, by order under his hand, suspend or revoke such prohibition upon importation if it is proved to his satisfaction that—

(a) The license to reproduce in Canada has terminated or expired; or

(b) The reasonable demand for the book in Canada is not sufficiently met without importation; or

(c) The book is not, having regard to the demand therefor in Canada, being suitably printed or published; or

(d) Any other state of things exists on account of which it is not in the public interest to further prohibit importation. (63-64 V, c. 25, s. 2.)

30. At any time after the importation of a book has been so prohibited, any person resident or being in Canada may apply, either directly or through a bookseller or other agent, to the person so licensed to reproduce such book, for a copy of any edition of such book then on sale and reasonably obtainable in the United Kingdom or any other part of His Majesty's dominions, and it shall thereupon be the duty of the person so licensed, as soon as reasonably may be, to import and sell such copy to the person so applying therefor, at the ordinary selling price of such copy in the United Kingdom, or such other part of His Majesty's dominions, with the duty and reasonable forwarding charges added.

2. The failure or neglect, without lawful excuse, of the person so licensed to supply such copy within a reasonable time shall be a reason for which the minister may, if he sees fit, suspend or revoke the prohibition upon importation. (63-64 V, c. 25, s. 3.)

(Revised Statutes of Canada, Vol. II, 1906, chap. 70, secs. 28, 29, 30.)

#### LICENSES.

17. No person, unless licensed as herein provided, shall carry on the business or trade of a distiller, rectifier, compounder, brewer or malster, manufacturer of tobacco or cigars, or bonded manufacturer, or use any utensil, machinery, or apparatus suitable for carrying on any such trade or business, or any business subject to excise, or import, make, or begin to make any still, rectifier, or other apparatus suitable for the manufacture of wash, beer, or

spirits, or for the rectification or compounding of spirits.  
(R. S., c. 34, s. 9.)

(Revised Statutes of Canada, 1906, Vol. II, chap. 51,  
sec. 17.)

[4 Edward VII, chap. 17.]

AN ACT To amend the inland revenue act.

[Assented to Aug. 10, 1904.]

His Majesty, by and with the advice and consent of  
the Senate and House of Commons of Canada, enacts as  
follows:

R. S. C. c. 34.  
New section. 1. The inland revenue act, chapter 34 of the Revised  
Statutes, is amended by inserting the following section  
immediately after section 96:

License to be  
forfeited  
in case of sale  
or consignment  
of goods under  
restrictive con-  
ditions.

“96a. The minister of inland revenue may declare  
forfeited any license authorized by this act in any case  
where a person who, being a manufacturer of any class  
of goods subject to a duty of excise, either directly or  
indirectly (a) makes a sale of any such goods, or consigns  
them for sale upon commission, to another person, sub-  
ject to the condition that the purchaser or the consignee  
shall not sell or deal in goods of a like kind produced by,  
or obtained or to be obtained from, any other manu-  
facturer or dealer; or (b) makes a sale of any such goods,  
or consigns them for sale upon commission, to another  
person, upon such terms as would, in their application,  
give more profit to the purchaser or the consignee if he  
should not sell or deal in goods of a like kind produced  
by, or obtained or to be obtained from, any other manu-  
facturer or dealer, and the collector of inland revenue  
shall thereupon cause a notice of such forfeiture to be  
forthwith inserted in The Canada Gazette, and from and  
after the insertion thereof the license shall be null and  
void, and no new license shall be granted to such person,  
and no license shall be granted to any other person for  
carrying on any business in the premises occupied by  
him until the minister of inland revenue is satisfied that  
the dealings above referred to have ceased.

Notice of for-  
feiture.

Consequences  
of forfeiture.

Decision of  
minister to be  
final.

“2. The decision of the minister of inland revenue as  
to whether any sale or consignment of goods is, or is not,  
subject to any such conditions, or upon any such terms,  
as is or are defined in subsection 1 of this section shall  
be final.”

(Statutes of Canada, 4 Edw. VII, 1904, Vols. I and II,  
chap 17.)

POWER OF THE GOVERNOR IN COUNCIL TO REDUCE DUTIES OR  
PLACE ON FREE LIST.

18. Whenever the governor in council has reason to believe that with regard to any article of commerce there exists any trust, combination, association, or agreement of any kind among manufacturers of the article or dealers therein to unduly enhance the price of the article, or in any other way to unduly promote the advantage of the manufacturers or dealers at the expense of the consumers, the governor in council may commission or empower any judge of the supreme court of Canada or of the exchequer court of Canada, or of any superior court in any Province of Canada, to inquire in a summary way into and report to the governor in council whether such trust, combination, association, or agreement exists. Inquiry by judge.

2. The judge may compel the attendance of witnesses. and examine them under oath, and require the production of books and papers, and shall have such other necessary powers as are conferred upon him by the governor in council for the purposes of such inquiry. Evidence

3. If the judge reports that such trust, combination, association, or agreement exists, and if it appears to the governor in council that the disadvantage to the consumers is facilitated by the duties of customs imposed on a like article when imported, then the governor in council shall place the article on the free list, or so reduce the duty on it as to give to the public the benefit of reasonable competition in such article. (60-61 V., c. 16, s. 18.) Report.

(Revised Statutes of Canada, 1906, vol. 1, p. 834.)

12 Whenever, from or as a result of a judgment of the supreme court or exchequer court of Canada, or of any superior court, or circuit, district, or county court in Canada, it appears to the satisfaction of the governor in council that with regard to any article of commerce there exists any conspiracy, combination, agreement, or arrangement of any kind among manufacturers of such articles or dealers therein to unduly promote the advantage of the manufacturers or dealers at the expense of the consumers, the governor in council may admit the article free of duty, or so reduce the duty thereon as to give the public the benefit of reasonable competition in the article. Combines and conspiracies.  
if it appears to the governor in council that such disadvantage to the consumer is facilitated by the duties of customs imposed on a like article. Powers of governor in council.

(Repealed by sec. 47, combines investigation act, 1910.)

**Inquiry by judge.** 2. Whenever the governor in council deems it to be in the public interest to inquire into any conspiracy, combination, agreement, or arrangement alleged to exist among manufacturers or dealers in any article of commerce to unduly promote the advantage of the manufacturers or dealers in such article at the expense of the consumers, the governor in council may commission or empower any judge of the supreme court or of the exchequer court of Canada, or of any superior court or county court in Canada, to hold an inquiry in a summary way and report to the governor in council whether such conspiracy, combination, agreement, or arrangement exists.

**Evidence.** 3. The judge may compel the attendance of witnesses and examine them under oath and require the production of books and papers, and shall have such other necessary powers as are conferred upon him by the governor in council for the purpose of such inquiry.

**Report of judge.** 4. If the judge reports that such conspiracy, combination, agreement, or arrangement exists in respect of such article, the governor in council may admit the article free of duty, or so reduce the duty thereon as to give to the public the benefit of reasonable competition in the article, if it appears to the governor in council that such disadvantage to the consumer is facilitated by the duties of customs imposed on a like article.

**Powers of governor in council therefrom.**

(Canada, The Customs Tariff, 1907, chap. 11, sec. 12.)

### COMBINES INVESTIGATION ACT.

[9-10 Edward VII, chap. 9.]

AN ACT To provide for the investigation of combines, monopolies, trusts, and mergers.

[Assented to May 4, 1910.]

His Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

**Short title.** 1. This act may be cited as the "combines investigation act."

### INTERPRETATION.

**Definitions.** 2. In this act, unless the context otherwise requires—  
**Application.** (a) "Application" means an application to a judge for an order directing an investigation under the provisions of this act;



(b) "Board" means a board, of investigation established under the provisions of this act;

(c) "Combine" means any contract, agreement, arrangement, or combination which has, or is designed to have, the effect of increasing or fixing the price or rental of any article of trade or commerce or the cost of the storage or transportation thereof, or of the restricting competition in or of controlling the production, manufacture, transportation, storage, sale, or supply thereof, to the detriment of consumers or producers of such article of trade or commerce, and includes the acquisition, leasing, or otherwise taking over, or obtaining by any person to the end aforesaid, of any control over or interest in the business or any portion of the business of any other person, and also includes what is known as a trust, monopoly, or merger;

(d) "Department" means the department of labor; Department.

(e) "Judge" means, in the Province of Ontario, any judge of the high court of justice; in the Province of Quebec, any judge of the superior court; in the Provinces of Nova Scotia, New Brunswick, British Columbia, Prince Edward Island, Saskatchewan, and Alberta, any judge of the supreme court; in the Province of Manitoba, any judge of the court of King's bench; and in the Yukon Territory, any judge of the territorial court; Judge.

(f) "Minister" means the minister of labor; Minister.

(g) "Order" means an order of a judge under the provisions of this act; Order.

(h) "Prescribed" means prescribed by this act or by any rule or regulation made thereunder; Prescribed.

(i) "Registrar" means the registrar of boards of investigation appointed under this act. Registrar.

#### ADMINISTRATION.

3. The minister shall have the general administration of this act. Administration.

4. The governor in council shall appoint a registrar of boards of investigation, who shall have the powers and perform the duties prescribed. Registrar of boards.

(2) The office of registrar may be held either separately or in conjunction with any other office in the public service, and in the latter case the registrar may, if the governor in council thinks fit, be appointed by reference to such other office, whereupon the person who for the Appointment and tenure of office.

time being holds such office or performs its duties shall, by virtue thereof and without thereby being entitled to any additional remuneration, be the registrar.

#### ORDER FOR INVESTIGATION.

Order for investigation.

5. Where six or more persons, British subjects resident in Canada and of full age, are of opinion that a combine exists, and that prices have been enhanced or competition restricted by reason of such combine, to the detriment of consumers or producers, such persons may make an application to a judge for an order directing an investigation into such alleged combine.

Application for order.

(2) Such application shall be in writing addressed to the judge, and shall ask for an order directing an investigation into the alleged combine, and shall also ask the judge to fix a time and place for the hearing of the applicants or their representative.

Form of application.

(3) The application shall be accompanied by a statement setting forth—

(a) The nature of the alleged combine and the persons believed to be concerned therein;

(b) The manner in which the alleged combine affects prices or restricts competition, and the extent to which the alleged combine is believed to operate to the detriment of consumers or producers;

(c) The names and addresses of the parties making the application and the name and address of one of their number or of some other person whom they authorize to act as their representative for the purposes of this act and to receive communications and conduct negotiations on their behalf.

Declaration of applicants.

(4) The application shall also be accompanied by a statutory declaration from each applicant declaring that the alleged combine operates to the detriment of the declarant as a consumer or producer, and that to the best of his knowledge and belief the combine alleged in the statement exists and that such combine is injurious to trade or has operated to the detriment of consumers or producers in the manner and to the extent described, and that it is in the public interest that an investigation should be had into such combine.

Hearing of application.

6. Within 10 days after the judge receives the application he shall fix a time and place for hearing the applicants and shall send due notice, by registered letter, to

the representative authorized by the statement to receive communications on behalf of the applicants. At such hearing the applicants may appear in person or by their representative or by counsel.

7. If upon such hearing the judge is satisfied that there is reasonable ground for believing that a combine exists which is injurious to trade or which has operated to the detriment of consumers or producers, and that it is in the public interest that an investigation should be held, the judge shall direct an investigation under the provisions of this act; or if not so satisfied, and the judge is of opinion that in the circumstances an adjournment should be ordered, the judge may adjourn such hearing until further evidence in support of the application is given, or he may refuse to make an order for an investigation.

Order for investigation by judge.

Adjournment for further evidence.

(2) The judge shall have all the powers vested in the court of which he is a judge to summon before him and enforce the attendance of witnesses, to administer oaths, and to require witnesses to give evidence on oath or on solemn affirmation (if they are persons entitled to affirm in civil matters), and to produce such books, papers, or other documents or things as the judge deems requisite.

Powers of judge.

8. The order of the judge directing an investigation shall be transmitted by him to the registrar by registered letter, and shall be accompanied by the application, the statement, a certified copy of any evidence taken before the judge, and the statutory declarations. The order shall state the matters to be investigated, the names of the persons alleged to be concerned in the combine, and the names and addresses of one or more of their number with whom, in the opinion of the judge, the minister should communicate in order to obtain the recommendation for the appointment of a person as a member of the board as hereinafter provided.

Transmission of order and evidence to registrar.

#### APPOINTMENT OF BOARDS.

9. Upon receipt by the registrar of the order directing an investigation the minister shall forthwith proceed to appoint a board.

Appointment of board.

10. Every board shall consist of three members, who shall be appointed by the minister under his hand and seal of office.

Constitution of board.

11. Of the three members of the board one shall be appointed on the recommendation of the persons upon

Members of board.

whose application the order has been granted, one on the recommendation of the persons named in the order as being concerned in the alleged combine, and the third on the recommendation of the two members so chosen.

Recommendation of third member.

12. The persons upon whose application the order has been granted and the persons named in the order as being concerned in the alleged combine, within seven days after being requested so to do by the registrar, may each respectively recommend the name of a person who is willing and ready to act as a member of the board, and the minister shall appoint such persons members of the board.

Communications with representatives of parties.

(2) For the purpose of obtaining the recommendations referred to in subsection 1 of this section it shall be sufficient, as respects the applicants, for the registrar to communicate with the representative mentioned in the statement as authorized to receive communications on their behalf, and as respects the persons concerned in the alleged combine it shall be sufficient for the registrar to communicate with the persons named in the order as the persons with whom the minister should communicate for this purpose.

When minister may select members.

(3) If the parties, or either of them, fail or neglect to make any recommendation within the said period, or such extension thereof as the minister, on cause shown, grants, the minister shall, as soon thereafter as possible, select and appoint a fit person or persons to be a member or members of the board.

Recommendation and appointment of a judge as third member.

(4) The two members so appointed may, within seven days after their appointment, recommend the name of a judge of any court of record in Canada who is willing and ready to act as a third member of the board, and the minister shall appoint such judge as a member of the board, and if they fail or neglect to make a recommendation within the said period, or such extension thereof as the minister on cause shown grants, the minister shall, as soon thereafter as possible, select and appoint a judge of any court of record in Canada to be the third member of the board.

Chairman.

(5) The third member of the board shall be its chairman.

Vacancies.

(6) A vacancy in the membership of a board shall be filled in the same manner as an original appointment is made.

Persons disqualified as members.

13. No person shall act as a member of the board who is one of the applicants for the board or who has any

direct pecuniary interest in the alleged combine that is the subject of investigation by such board, or who is not a British subject.

14. As soon as possible after all the members of the board have been appointed by the minister the registrar shall notify the parties of the names of the chairman and other members of the board. Notice of personnel of board.

15. Before entering upon the exercise of the functions of their office the members of the board shall take the following oath: Oath of office.

I, ———, do solemnly swear—

That I will truly, faithfully, and impartially perform my duties as a member of the board appointed to investigate ———.

That I am a British subject.

That I have no direct pecuniary interest in the alleged combine that is to be the subject of investigation.

That I have not received nor will I accept, either directly or indirectly, any perquisite, gift, fee, or gratuity from any person in any way interested in any matter or thing to be investigated by the board.

That I am not immediately connected in business with any of the parties applying for this investigation, and am not acting in collusion with any person herein.

16. The department may provide the board with a stenographer and such clerical and other assistance as to the minister appears necessary for the efficient carrying out of the provisions of this act. The department shall also repay any reasonable and proper disbursements made or authorized and certified by the judge who grants the order directing the investigation. Clerical assistance to board.  
Disbursements.

17. Upon the appointment of the board the registrar shall forward to the chairman copies of the application, statement, evidence, if any, taken before the judge, and order for investigation, and the board shall forthwith proceed to deal with the matters referred to therein. Commencement of investigation.

#### INQUIRY AND REPORT.

18. The board shall expeditiously, fully, and carefully inquire into the matters referred to it and all matters affecting the merits thereof, including the question of whether or not the price or rental of any article concerned has been unreasonably enhanced, or competition in the supply thereof unduly restricted, in consequence Inquiry.

**Report to minister.** of a combine, and shall make a full and detailed report thereon to the minister, which report shall set forth the various proceedings and steps taken by the board for the purpose of fully and carefully ascertaining all the facts and circumstances connected with the alleged combine, including such findings and recommendations as, in the opinion of the board, are in accordance with the merits and requirements of the case.

**Scope of investigation.** (2) In deciding any question that may affect the scope or extent of the investigation, the board shall consider what is required to make the investigation as thorough and complete as the public interest demands.

**Report of board.** 19. The board's report shall be in writing, and shall be signed by at least two of the members of the board. The report shall be transmitted by the chairman to the registrar, together with the evidence taken at such investigation certified by the chairman, and any documents and papers remaining in the custody of the board. A minority report may be made and transmitted to the registrar by any dissenting member of the board.

**Publication of reports.** 20. Upon receipt of the board's report and of the minority report, if any, a copy thereof shall be sent free of charge to the parties and to the representative of any newspaper in Canada who applies therefor, and the report and minority report, if any, shall also be published without delay in the Canada Gazette. The minister may distribute copies of the report, and of any minority report, in such manner as to him seems most desirable, as a means of securing a compliance with the board's recommendations. The registrar shall, upon payment of such fees as may be prescribed, supply a certified copy of any report or minority report to any person applying for it.

**Distribution of copies.** **Fee for certified copies.** 21. Whenever, from or as a result of an investigation under the provisions of this act, or from or as a result of a judgment of the supreme court or exchequer court of Canada or of any superior court, or circuit, district, or county court in Canada, it appears to the satisfaction of the governor in council that with regard to any article there exists any combine to promote unduly the advantage of the manufacturers or dealers at the expense of the consumers, and if it appears to the governor in council that such disadvantage to the consumer is facilitated by the duties of customs imposed on the article, or on any like article, the governor in council may direct either that

**Reduction of customs duties to secure reasonable competition.**

such article be admitted into Canada free of duty or that the duty thereon be reduced to such amount or rate as will, in the opinion of the governor in council, give the public the benefit of reasonable competition.

22. In case the owner or holder of any patent issued under the patent act has made use of the exclusive rights and privileges which, as such owner or holder he controls, so as unduly to limit the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any article which may be a subject of trade or commerce, or so as to restrain or injure trade or commerce in relation to any such article, or unduly to prevent, limit, or lessen the manufacture or production of any article or unreasonably to enhance the price thereof, or unduly to prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation, storage, or supply of any article, such patent shall be liable to be revoked. And, if a board reports that a patent has been so made use of, the minister of justice may exhibit an information in the exchequer court of Canada praying for a judgment revoking such patent, and the court shall thereupon have jurisdiction to hear and decide the matter and to give judgment revoking the patent or otherwise as the evidence before the court may require.

Revocation of patent in certain cases.

Jurisdiction of exchequer court.

23. Any person reported by a board to have been guilty of unduly limiting the facilities for transporting, producing, manufacturing, supplying, storing, or dealing in any article which may be a subject of trade or commerce; or of restraining or injuring trade or commerce in relation to any such article; or of unduly preventing, limiting, or lessening the manufacture or production of any such article; or of unreasonably enhancing the price thereof; or of unduly preventing or lessening competition in the production, manufacture, purchase, barter, sale, transportation, storage, or supply of any such article, and who thereafter continues so to offend, is guilty of an indictable offense and shall be liable to a penalty not exceeding \$1,000 and costs for each day after the expiration of 10 days, or such further extension of time as in the opinion of the board may be necessary, from the date of the publication of the report of the board in the Canada Gazette during which such person so continues to offend.

Combines restricting manufacture, trade, or competition.

Penalty.

## SITTINGS OF BOARD.

- Sittings of board.** 24. The sittings of the board shall be held at such times and places as are fixed by the chairman, after consultation with the other members of the board, and the parties shall be notified by the chairman as to the times and places at which sittings are to be held; provided that, so far as practicable, the board shall sit in the locality within which the subject matter of the proceedings before it arose.
- Proceedings.** 25. The proceedings of the board shall be conducted in public, but the board may order that any portion of the proceedings shall be conducted in private.
- Decisions.** 26. The decision of any two of the members present at a sitting of the board shall be the decision of the board.
- Quorum.** 27. The presence of the chairman and at least one other member of the board shall be necessary to constitute a sitting of the board.
- Absence of member.** 28. In case of the absence of any one member from a meeting of the board the other two members shall not proceed, unless it is shown that the absent member has been notified of the meeting in ample time to admit of his attendance.
- Appearance of parties.** 29. Any party to an investigation may appear before the board in person or may be represented by any other person or persons, or, with the consent of the board, may be represented by counsel.
- When counsel appointed by minister.** 30. Whenever in the opinion of the minister the public interest so requires, the minister may apply to the minister of justice to instruct counsel to conduct the investigation before a board, and upon such application the minister of justice may instruct counsel accordingly. The fees and expenses allowed to such counsel by the minister of justice shall be paid out of such appropriations as are made by Parliament to provide for the cost of administering this act.
- Contempt of board.** 31. If, in any proceedings before the board, any person willfully insults any member of the board, or willfully interrupts the proceedings, or without good cause refuses to give evidence, or is guilty in any other manner of any willful contempt in the face of the board, any officer of the board, or any constable may take the person offending into custody and remove him from the precincts of the board, to be detained in custody until the conclusion of that day's sitting of the board, and the person so offend-



ing shall be liable, upon summary conviction, to a penalty not exceeding \$100. Penalty.

#### WITNESSES AND EVIDENCE.

32. For the purposes of an investigation the board shall have all powers which are vested in any court of record in civil cases for the following purposes, namely: The summoning of witnesses before it, and enforcing their attendance from any part of Canada, of administering oaths, and of requiring witnesses to give evidence on oath or on solemn affirmation (if they are persons entitled to affirm in civil matters), and to produce such books, papers, or other documents or things as the board deems requisite to the full investigation of the matters into which it is inquiring. Witnesses and evidence.

(2) Any member of the board may administer an oath. Oath.

(3) Summonses to witnesses and all other orders, process, and proceedings shall be signed by the chairman. Signature of chairman.

33. All books, papers, and other documents or things produced before the board, whether voluntarily or in pursuance of summons, may be inspected by the board, and also by such parties as the board allows. Inspection of documents.

34. Any party to the proceedings shall be competent and may be compelled to give evidence as a witness. Parties as witnesses.

35. Every person who is summoned and duly attends as a witness shall be entitled to an allowance for attendance and traveling expenses according to the scale in force with respect to witnesses in civil suits in the superior courts of the Province in which the inquiry is being conducted. Expenses of witnesses.

36. If any person who has been duly served with a summons and to whom at the time of service payment or tender has been made of his reasonable traveling expenses according to the aforesaid scale, fails to attend or to produce any book, paper, or other document or thing as required by his summons, he shall, unless he shows that there was good and sufficient cause for such failure, be guilty of an offense and liable upon summary conviction to a penalty not exceeding \$100. Failure of witness to attend or to produce documents.

37. The board may, with the consent of the minister, employ competent experts to examine books or official reports, and to advise it upon any technical or other matter material to the investigation, but the information obtained therefrom shall not, except in so far as the board Penalty.

Experts.

deems it expedient, be made public, and such parts of the books, papers, or other documents as in the opinion of the board are not material to the investigation may be sealed up.

#### REMUNERATION AND EXPENSES OF BOARD.

Remuneration  
of board.

38. The members of a board shall be remunerated for their services as follows:

(a) To the two members first appointed an allowance of \$5 each per day for a time not exceeding three days during which they may be actually engaged in selecting the third member of the board.

(b) To each member an allowance at the rate of \$20 for each day's sitting of the board.

Traveling ex-  
penses.

39. Each member of the board shall be entitled to his actual and necessary traveling expenses and an allowance of \$10 per day for each day that he is engaged in traveling from or to his place of residence for the purpose of attending or after having attended a meeting of the board.

Acceptance of  
gratuity pro-  
hibited.

40. No member of the board shall accept, in addition to his traveling expenses and allowances as a member of the board, any perquisite, gift, fee, or gratuity of any kind from any person in any way interested in any matter or thing that is being investigated by the board. The acceptance of any such perquisite, gift, fee, or gratuity by any member of the board shall be an offense, and shall render such member liable upon summary conviction to a fine not exceeding \$1,000, and he shall thereafter be disqualified to act as a member of any board.

Penalty.

Vouchers for  
expenses.

41. All expenses of the board, including expenses for transportation incurred by the members thereof or by persons under its order in making investigations under this act, salaries of employees and agents, and fees and traveling expenses of witnesses, shall be allowed and paid upon the presentation of itemized vouchers therefor, approved and certified by the chairman of the board, which vouchers shall be forwarded by the chairman to the registrar. The chairman shall also forward to the registrar a certified and detailed statement of the sittings of the board and of the members present at each of such sittings.

Detailed  
statement  
of  
sittings.

## MISCELLANEOUS.

42. No proceedings under this act shall be deemed invalid by reason of any defect of form or any technical irregularity. Technical irregularities.

43. Evidence of a report of a board may be given in any court by the production of a copy of the Canada Gazette purporting to contain a copy of such report, or by the production of a copy of the report purporting to be certified by the registrar to be a true copy. Evidence of report.

44. The minister shall determine the allowance or amounts to be paid to all persons, other than the members of a board employed by the Government, or any board, including the secretaries, clerks, experts, stenographers, or other persons performing any services under the provisions of this act. Allowances determined by minister.

45. The governor in council may make such regulations not inconsistent with this act, as to him seem necessary for carrying out the provisions of this act and for the efficient administration thereof. Regulations by governor in council.

(2) Such regulations shall be published in the Canada Gazette, and upon being so published they shall have the same force as if they formed part of this act. Publication.

(3) The regulations shall be laid before both Houses of Parliament within 15 days after such publication if Parliament is then sitting, and if Parliament is not then sitting then within 15 days after the opening of the next session thereof. To be laid before Parliament.

46. The minister shall lay before Parliament, within the first 15 days of the then next session, an annual report of the proceedings under this act. Annual report to Parliament.

47. Subsection 1 of section 12 of the customs tariff, 1907, is repealed. 1907, c. 11, amended.

48. This act shall not be construed to repeal, amend, or in any way affect the trade-unions act, chapter 125 of the Revised Statutes, 1906. R. S., c. 125.

## SCHEDULE.

[Form 1.]

## APPLICATION FOR ORDER DIRECTING AN INVESTIGATION.

[The combines investigation act, sec. 5.]

Dated at ———, this ——— day of ———, 19—.

In the matter of an alleged combine (here state shortly the nature of the combine)

To the honorable (here insert the name of the judge), a judge (or chief justice as the case may be) of the (here insert the title of the court).

The undersigned are of opinion that a combine exists (here state shortly the nature of the alleged combine) and that prices have been enhanced (or competition has been restricted by such combine, as the case may be) to the detriment of consumers (or producers, as the case may be).

The undersigned therefore apply for an order under "the combines investigation act" directing an investigation into such alleged combine.

(Here state—(a) the nature of the alleged combine and the persons believed to be concerned therein; and, (b) the manner in which the alleged combine affects prices or restricts competition, and the extent to which the alleged combine is believed to operate to the detriment of consumers or producers, as the case may be.)

#### STATEMENT ACCOMPANYING APPLICATION FOR ORDER.

Dated at ——— this ——— day of ———, 19—.

The undersigned hereby authorize ——— of (give name and place of residence) to act as our representative for the purpose of "the combines investigation act," and to receive communications and conduct negotiations on our behalf.

The names and addresses of the persons applying for the aforesaid order are as follows:

| Names. | Addresses. |
|--------|------------|
|        |            |

#### STATUTORY DECLARATION ACCOMPANYING APPLICATION FOR ORDER.<sup>1</sup>

CANADA:

*Province of ———, to wit:*

I, ———, of the ——— of ——— in the ——— of ——— do solemnly declare:

1. That the alleged combine operates to my detriment as a consumer (or producer, as the case may be).

2. That to the best of my knowledge and belief the combine alleged in the foregoing statement exists, and that such combine is injurious to trade (or has operated to the detriment of consumers or producers, as the case may be) in the manner and to the extent described.

3. That it is in the public interest that an investigation should be had into such combine.

And I make this solemn declaration conscientiously believing it to be true, and knowing that it is of the same force and effect as if made under oath, and by virtue of the Canada evidence act.

Declared before me at ———, in the county of ———, this ——— day of ———, 19—.

<sup>1</sup> A declaration as above must be made by each applicant.

[Form 2.]

## ORDER DIRECTING INVESTIGATION.

[The combines investigation act, sec. 7.]

In the matter of the application of (here insert the names of applicants), dated the — day of —, 19—, for an order directing an investigation under “the combines investigation act” into an alleged combine (here state shortly the nature of the combine).

I, the honorable ———, a judge (or chief justice, as the case may be) of (here insert the name of court), after having read the application of (names of applicants), dated the — day of —, 19—, the statement and statutory declarations accompanying the same, and the evidence produced by the said applicants, am satisfied that there is reasonable ground for believing that a combine exists (here describe nature of combine), which is injurious to trade (or which has operated to the detriment of consumers or producers, as the case may be), and that it is in the public interest that an investigation should be held, under the provisions of the said act, into the following matters, that is to say: (Here set out the matters to be investigated.)

The names of the persons alleged to be concerned in the alleged combine are (here insert names and addresses), and I am of opinion that the minister of labor should communicate with (here insert the name or names with, in each case, the address), in order to obtain the recommendation for the appointment of a person as a member of the board of investigation on behalf of those concerned in the said alleged combine.

Dated at ———, this — day of —, 19—.



## CAPE OF GOOD HOPE.

### ACT TO PREVENT A MONOPOLY OF THE MEAT TRADE (No. 15 of 1907).

Whereas, it appears that within recent years certain persons have formed combinations for regulating the meat trade in order to secure larger profits, and whereas the effect of such combinations is prejudicial to the public interest, and whereas it is desirable to provide by law against such combinations.

Be it enacted by the Governor of the Cape of Good Hope, by and with the advice and consent of the Legislative Council and the House of Assembly thereof, as follows:—

1. In this Act the following words shall, unless the context otherwise requires, bear the meanings set opposite them:—

“Butcher” shall mean any person who is required to take out a butcher’s licence under the provisions of Section twenty of Act No. 3 of 1864, and Section five of the amending Act No. 43 of 1898.

“Person” shall include any partnership or company.

“Superior Court” shall mean the Supreme Court, Eastern Districts Court, High Court or any Circuit Court within their respective jurisdictions.

2. Every licence to carry on the trade of a butcher, issued after the promulgation of this Act, shall bear endorsed thereon the address of the premises in which the trade is to be carried on, and any person who shall carry on the said trade in premises other than those in respect of which the licence has been issued shall be subject to the penalties to which any person is liable who carried on such trade without a licence, provided, however, that nothing in this section contained shall be deemed to affect the provisions of sections seven, eight and nine of Act No. 13 of 1870: Provided further and notwithstanding anything to the contrary in Act No. 20 of 1884, the licence fee payable by a butcher to sell South African grown

meat only, shall be Five Pounds per annum, and the licence fee payable by a butcher to sell also other than South African grown meat, or to sell other than South African grown meat only, shall be Ten Pounds per annum.

3. Every act, contract, combination or conspiracy in unreasonable restraint of the trade of a butcher is hereby declared to be illegal, and every person who shall commit any such act or make any such contract or engage in such combination or conspiracy shall be guilty of a criminal offence, and subject on conviction to a penalty not exceeding £500, and in default of payment thereof to imprisonment with or without hard labour for a period not exceeding twelve months: Provided

(1) That it shall not be illegal for any person carrying on the trade of a butcher to enter into a *bonâ fide* partnership with any other person carrying on the same trade; or to enter into any *bonâ fide* arrangement with any other person or persons carrying on the same trade, with the object of effecting economies in the said trade or carrying on business more economically.

(2) That the provisions of this section shall not apply to any contract which is the mere accompaniment of the sale of fixed property for the purpose of enhancing the price at which the vendor sells the said property.

4. All contracts and undertakings in support of any combination the object of which is to secure the control of the sale of meat, so as to enable such combination to arbitrarily control or regulate the price thereof, shall be held to be illegal and void.

5. Any person who is engaged in the trade of a butcher or acting on behalf of a butcher, who shall compel, or attempt to compel, by threats, or intimidation, verbally or in writing, any butcher to sell meat at a price or prices other than those at which he is or was selling at the time when such threats or intimidation were made, or would have sold but for such threats or intimidation, shall be guilty of a criminal offence and subject on conviction to a penalty not exceeding £100, and in default of payment thereof to imprisonment with or without hard labour for a period not exceeding six months.



6. The licence to carry on the trade of a butcher issued to any person who shall be convicted under sections three or five hereof shall be cancelled and no such licence shall be issued to him at any time within the period of two years from the date of such a conviction.

7. Any contravention of the provisions of sections three and five of this Act shall be prosecuted in a superior court.

8. The foregoing provisions of this Act or any of them, with the exception of that part of section two which applies to the licence fees payable by butchers, shall become operative only in those Divisions of this Colony in which it may be proclaimed to be in force by the Governor upon an application to that effect from the Divisional Council of the Division, under a resolution adopted by such Council at a meeting where at least three-fourths of the members are present, and at least a majority of those present voted for the resolution: provided that if the Divisional Councils of the Cape, Port Elizabeth, East London or Kimberley decline to make such application, any Municipal Council within any one of these Divisions may make application for the proclamation of the provisions of this Act within its own Municipal area.

9. This Act may be cited for all purposes as the "Meat Trade Act, 1907."



## GREAT BRITAIN.

### GREAT BRITAIN COMPANIES (CONSOLIDATION) ACT.

The interests of the trading public in England, as represented by consumers and dealers, have not been the subject of special legislation (except in the ancient statutes covering the cases of badgering, engrossing, forestalling, and regrating). Combinations in restraint of trade are *prima facie* void and not illegal; no statute in force makes them criminal, and the policy of the law, as at present declared by the legislature, is against all fetters on combination and competition unaccompanied by violence or fraud or other like injurious acts.

The common law and the statutes with reference to badgering, forestalling, regrating, and engrossing declared that certain large operations in goods which interfered with the ordinary course of trade were injurious to the public, and they were held criminal accordingly, but the penal statutes were repealed by 12 George III (c. 71), and the common law was left unaided. By 7 and 8 Victoria (c. 24) the common law in respect to badgering, engrossing, forestalling, and regrating was expressly repealed, with a proviso to the effect that the act should not apply to the offense of knowingly and fraudulently spreading or conspiring to spread false rumors with intent to affect the prices of goods or merchandise, nor to the offense of preventing or endeavoring to prevent, by force or threats, goods or merchandise being brought to market.<sup>1</sup>

On the other hand, the interests of the trading public, from the standpoint of investors and creditors, have been the subject of careful consideration and considerable legislation, and incidentally some of the abuses often charged to industrial combinations, such as overcapitalization and its results, have in a measure been corrected by the publicity given to corporate affairs.

The subject of company-law reform was investigated in 1894 by a departmental committee composed of mem-

---

<sup>1</sup> *Mogul S. S. Co. v. McGregor*, 23 Q. B. D. (1889), 629.

bers of Parliament, judges, prominent lawyers, and merchants, who, after considering the comments and suggestions of commercial bodies throughout the country, framed a bill which was introduced in 1894. This occupied the attention of the House of Lords until 1900, when it was finally passed, considerably modified but very much on the original lines.

The purposes of the legislation and the condition which led to its adoption, as shown by the report of the committee in 1895, the annual reports of the board of trade, and Parliamentary debates, are briefly indicated below.

It was generally conceded that the vast majority of corporations were honestly formed for the purpose of engaging in legitimate business, and that the facilities offered by the companies act of 1862 (the first great corporation act) for the formation of companies with limited liability greatly extended British trade and attracted a great amount of foreign capital, but it was generally acknowledged that certain abuses of public confidence which did not exist prior to this act, and which would have been practically impossible in the case of individuals or private partnerships, had developed to such an extent as to warrant the consideration of new legislation with a view to their correction.

The problem before Parliament was, on one hand, the protection of the large body of the public represented in investors and creditors, and, on the other hand, to avoid restricting unduly the facilities for the creation and development of corporations, which had contributed so largely to the prosperity of the country, and needlessly embarrassing their administration.

Instead of adopting arbitrary rules which in some cases might effectively prevent an abuse but in others seriously interfere with the prosecution of legitimate business, it was deemed sufficient, for the time being at least, to provide for a certain amount of publicity in corporate affairs, enforcing those requirements by penalties, imposed in many cases upon the individuals who knowingly and willfully disregarded them.

The necessity for publicity, and its effect, can best be shown by a few typical cases.

A frequent cause of failure and the resulting loss to stockholders and creditors was the so-called "loading" of the purchase price of property acquired by a new corporation. An option to purchase a business frequently

passed through a number of vendors, the price being increased with each successive sale. It was pointed out that there was no objection to this provided that it was done openly. If the persons invited to subscribe to the new company were informed that they would purchase the property at, say, twice the amount the real and present owner was willing to sell it for, and they cared to invest in such an undertaking, it was their own affair.

The law now provides that a prospectus, which it defines as any notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company, must be filed with the registrar of companies, and must show (1) the names and addresses of the vendors, and where there is more than one separate vendor, or the company is a subpurchaser, the amount payable to each vendor; (2) the particulars and the nature and extent of the interest of every director in the promotion of, or property to be acquired by, the company; (3) the dates of and parties to every material contract, and a reasonable time and place for the inspection of such contracts; and further, that a company which does not issue a prospectus shall not allot any shares or debentures until a statement in lieu of a prospectus has been filed. A person is deemed a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company.

The purpose of the legislation is to disclose the real vendor, the real purchase price, and who is profiting by the promotion.

Another frequent cause of disaster in England, as shown by the reports of the board of trade, was proceeding to allotment of shares with insufficient subscriptions. often merely for the purpose of paying the preliminary expenses. While it was deemed impracticable to fix a proportion of the capital to be subscribed before allotment, owing to the varying circumstances of each case, the law provides that the minimum amount upon which a company offering shares to the public may proceed to issue stock must be fixed by the memorandum or articles of association and named in the prospectus, in default of which the entire capital offered for subscription must be taken. The subscriber is thus given an opportunity of forming his own judgment as to the immediate prospects of the company.

Another serious cause of complaint sought to be corrected by publicity was in connection with debentures and mortgages. A man owning a declining business could incorporate, taking debentures or a mortgage from the company in payment for his property, thus becoming his own secured creditor. In case of failure, not only the creditors but the stockholders suffered, because he held practically all the assets.

The inadequacy of the partial publicity required by the earlier acts was shown by cases of intending creditors, who, from their examination of the records, were informed that there was a large amount of uncalled capital due, often from a list of substantial stockholders. They were unaware of a mortgage on the uncalled capital,<sup>1</sup> and, extending credit under such circumstances, they assumed a risk they possibly would not have considered if they had been fully informed. The law now provides that particulars of all mortgages, debentures, and charges shall be filed with the registrar of companies and shall be open to public inspection. While it was fully realized that legislation could not protect the public from the results of their own recklessness, it was considered proper that corporations should supply the inquiring investor or creditor with information sufficient at least to enable him to form a judgment, and that publicity as to financial status was a just and necessary condition to attach to the privilege of limited liability. Again, the disclosures required in many particulars are really no more than those due from persons acting in a fiduciary capacity, and while the underlying principles have long been recognized by courts of law and equity, they have frequently been overlooked by persons engaged in the promotion of corporations. The application of certain of these principles by the companies act tends not only to protect the public, but to bring home to promoters and directors a sense of their obligations and to shareholders the standards of commercial morality which they have a right to expect from persons whom they have been invited to trust.

One important feature of the act is that certain conditions made possible by secrecy are prevented, and that an unsatisfactory financial condition of the company is made apparent to the creditors and stockholders in time

---

<sup>1</sup> Under the English law the uncalled capital may be mortgaged if authorized by the memorandum and articles.

for them to take such action as seems necessary before the assets are further diminished.

It was pointed out in Parliament that the existing methods of redress by means of criminal actions were unsatisfactory because of the great indisposition to resort to criminal procedure and the tendency of juries to acquit for doing what was only a common practice. In addition it was necessary to be reasonably certain that there was sufficient evidence, and in some cases it was extremely difficult to secure it, while there might be little doubt that gross frauds had been committed. Civil actions were attended with considerable difficulty and heavy expense.

It is apparent from the foregoing that in order to give effect to certain provisions of the companies acts an administrative office was required. The duties were imposed upon the board of trade, and some of the most important will be noted hereafter.

A digest of the provisions of the act of 1908 in respect of (1) the classification of companies, (2) the powers and duties of the board of trade in connection with the administration of the act, accompanied by extracts from the annual reports of the board, (3) information available to the public, (4) the penalties for the enforcement of the act, and an outline of the history and organization of the board of trade are appended hereto.

#### CLASSIFICATION OF COMPANIES.

The English law has classified companies (1) in respect of the liability of members, (2) in respect of their organization and relation to the public.

#### IN RESPECT OF LIABILITY OF MEMBERS.

(a) Companies "limited by shares," defined as companies having the liability of their members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them.

(b) Companies "limited by guarantee," the liabilities of the members being limited by the memorandum of association to such amount as the members may respectively undertake to contribute to the assets of the company in the event of its being wound up.

(c) "Unlimited companies," the members of which have no limit to their liability. There are comparatively few companies of this class.

Unless otherwise noted, the provisions of the act hereafter referred to relate generally to companies "limited by shares."

IN RESPECT OF ORGANIZATION AND RELATION TO THE PUBLIC.

(a) "Private companies," which are defined as those which by their articles restrict the right to transfer shares, limit their membership to not more than 50 (exclusive of persons employed by the company), and prohibit any invitation to the public to subscribe for any shares or debentures.

(b) "Public companies," which include all other than private, and which are chiefly considered hereafter.

The most important distinctions between public and private companies are as follows:

(a) A private company may be formed by two persons, while a public company requires seven.

(b) The preliminary requirements are fewer in the case of private companies. The certificate of incorporation is granted upon the delivery to the registrar of companies of the memorandum and articles of association, whereas other companies can not commence business without compliance with a series of preliminary conditions, including the registration of a prospectus or a statement in lieu thereof.

(c) An annual audited balance sheet, summarizing the capital, liabilities, and assets of the company, is required from a public company, but not from a private company.<sup>1</sup>

(d) Private companies are not required to file with the registrar a copy of a detailed report as to the position of the company which is sent to members before its first or "statutory" meeting.<sup>2</sup>

(e) Private companies are exempt from the provisions of the act permitting the inspection of balance sheets, auditor's and other reports by holders of debentures and preference shares.<sup>3</sup>

POWERS AND DUTIES OF THE BOARD OF TRADE IN RESPECT TO THE ADMINISTRATION OF THE COMPANIES (CONSOLIDATION) ACT 1908.

While most of the duties imposed upon the board of trade by this act are in connection with the dissolution of

<sup>1</sup> Companies (consolidation) act, 1908, sec. 26.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 65.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 114.



companies, there are some powers which may be exercised under certain circumstances over going concerns.

*Inspection.*—Perhaps the most important, at least in theory, is that of inspection of the affairs of a company at the request of its stockholders.<sup>1</sup> This power of inspection, however, has been very rarely used.<sup>2</sup> The inspectors appointed by the board have access to all the books and documents of the company and may examine its officers and agents under oath, rendering, finally, a report to the board of trade. Copies of this report are, upon request, furnished to the applicants for the examination, and, when properly authenticated, are admissible in any legal proceeding as evidence of the opinion of the inspectors in relation to any matters therein contained.

Abuse of this privilege is prevented by a provision that the application shall be by persons holding not less than one-tenth of the shares issued, and by a requirement of the board of trade that the application shall be supported by evidence of the good faith of the applicants, and that they have good reason for demanding the investigation. The board may, in addition, require the applicants to secure the costs of the investigation, which must be defrayed by them unless, in the discretion of the board, they should be borne by the company.

*Audit.*—Upon the application of any stockholder the board of trade may appoint auditors for any company upon its failure to do so at its annual meeting.<sup>3</sup>

The regular audit of accounts, though usually provided for in the articles of a company, was considered by Parliament to be too important to stockholders and the public to be left to a voluntary arrangement. The appointment of auditors by the board of trade, upon the application of a stockholder, is provided for extending the principle adopted in regard to banking companies in the companies act 1879.<sup>4</sup> The auditors have access to all books and are required to report to the stockholders, on the accounts examined by them, which report shall state whether they have obtained all information and explanations required by them, and whether in their opinion the balance sheets submitted in general meeting exhibit a correct view of the company's affairs.

<sup>1</sup> Companies (consolidation) act, 1908, sec. 109.

<sup>2</sup> Palmer's Company Law (7th ed.), p. 220.

<sup>3</sup> Companies (consolidation) act, 1908, secs. 112–113.

<sup>4</sup> Palmer's Company Law (7th ed.), p. 221.

*Payment of interest out of capital.*—Where any shares are issued to raise money for the construction of any works, buildings, or plant which can not be made profitable for a lengthened period, the company may pay interest on so much of that share capital as is for the time being paid up, provided that it is authorized by the articles or special resolution, and, further, that it is sanctioned by the board of trade, which may investigate the circumstances at the expense of the company and the payments may continue only for such portion of the time limited by the act as the board may determine, but in no case shall the rate of interest exceed 4 per cent per annum or such lower rate as may be prescribed by order in council.<sup>1</sup>

*Articles of association.*—The act requires the articles of association to be registered, and provides that in the absence of articles adopted by the company, or in so far as filed articles do not exclude or modify model articles appended to the act, such model articles shall constitute the articles of the company.<sup>2</sup>

The board of trade may alter or add to these statutory articles, which alterations or additions will thereafter have the force of law; the changes, however, not affecting companies previously registered.<sup>3</sup>

*Change of name.*—A company may, by special resolution, change its name, but only with the consent of the board of trade.<sup>4</sup>

The board has authority to establish registration offices, make regulations as to the performance of the duties of the registrar, and to prescribe fees for the inspection or copies of the records of the registrar, not exceeding the maximum prescribed by the act.<sup>5</sup>

Other duties in connection with going concerns, but more ministerial in character, such as issuing certificates of incorporation, the registration of such documents as the act requires to be published, etc., have been imposed upon the board.

#### WINDING UP AND REMOVAL FROM REGISTER.

A company once incorporated can not be dissolved except by compliance with the provisions of the act, or by removal from the register as a defunct company.

<sup>1</sup> Companies (consolidation) act, 1908, sec. 91.

<sup>2</sup> Companies (consolidation) act, 1908, secs. 10 and 11.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 118.

<sup>4</sup> Companies (consolidation) act, 1908, sec. 8 (3).

<sup>5</sup> Companies (consolidation) act, 1908, sec. 243 (1), (2).

The grounds on which a winding-up order may be made by the court are:

(a) If the company has by special resolution resolved that the company be wound up by the court;

(b) If default is made in filing the statutory report or in holding the statutory meeting;

(c) If the company does not commence its business for a whole year;

(d) If the number of members is reduced, in the case of a private company, below two, or, in the case of any other company, below seven;

(e) If the company is unable to pay its debts;

(f) If the court is of the opinion that it is just and equitable that the company should be wound up.<sup>1</sup>

Just what "Just and equitable" means is, of course, impossible to define, but winding-up orders have been made on the ground that the substratum of the company was gone,<sup>2</sup> that the company was a bubble,<sup>3</sup> and that the company was conceived and brought forth in fraud.<sup>4</sup>

The winding-up order once having been issued by the court, however, the board of trade is charged with many important duties.

When it became necessary to appoint a receiver, the official receiver attached to the court for bankruptcy purposes shall be appointed, or, if there is more than one, such one of them as the board of trade may select, and in the absence of any official receiver the board may appoint an officer for the purpose.<sup>5</sup>

A receiver thus appointed shall submit a preliminary report to the court, stating the amount of capital issued, subscribed, and paid up; the estimated amount of assets and liabilities; the causes of failure; his opinion whether further investigation in regard to the promotion, formation, or failure of the company or the conduct of the business is desirable, and may report further whether in his opinion any fraud has been committed and mention any other matters desirable to be brought to the attention of the court.<sup>6</sup>

<sup>1</sup> Companies (consolidation) act, 1908, sec. 129.

<sup>2</sup> German Date Coffee Co., 20 C. D., 169; Red Rock Gold Mining Co., 61 L. T., 785.

<sup>3</sup> London & County Coal Co., 3 Eq., 355.

<sup>4</sup> J. E. Brinsmead & Sons (1897), 1 Ch. 45, 1 ch. 406 (Appeal).

<sup>5</sup> Companies (consolidation) act, 1908, sec. 146.

<sup>6</sup> Companies (consolidation) act, 1908, sec. 148.

If the receiver further reports that in his opinion fraud has been committed in the promotion of the company, or by any director or officer since its formation, the court may publicly examine such person or persons on oath, and the receiver and liquidator (if any) may take part in such examination. Notes of the examination shall be reduced to writing, signed by the person examined, and may be used in evidence against him, and shall be open to the inspection of any creditor or contributory.<sup>1</sup>

The public examination provided for in this section was introduced into the company laws as section 8 of the director's liability act, 1890, and was at first largely resorted to, but its operation was considerably curtailed by a decision of the House of Lords in 1896, holding that no order for public examination of a particular person can be made unless the official receiver expresses the opinion that such person has been guilty of fraud and shows how he is connected with the facts.<sup>2</sup>

The provision has, notwithstanding this limitation, been availed of in a number of cases, as shown by the following table:

*Public examinations.*

| Year.     | Winding-up orders. | Number of companies in which examination ordered. | Number of persons examined. |
|-----------|--------------------|---|-----------------------------|
| 1902..... | 112                | 10  | 15                          |
| 1903..... | 83                 | 16  | 50                          |
| 1904..... | 98                 | 7   | 25                          |
| 1905..... | 89                 | 11  | 33                          |
| 1906..... | 116                | 8   | 16                          |
| 1907..... | 108                | 10  | 24                          |
| 1908..... | 126                | 9   | 28                          |
| 1909..... | 146                | 9   | 18                          |
| 1910..... | 135                | 6   | 11                          |

<sup>1</sup> Reports, Board of Trade, 1902-1910.

Where, in the course of winding up a company, it appears that any person taking part in the formation or promotion of the company, or any past or present director, manager, liquidator, or officer has misapplied any funds, or has been guilty of breach of trust, the court may, upon the application of the official receiver, liquidator, or any creditor or contributory, examine into the conduct of the person complained of and compel him to

<sup>1</sup> Companies (consolidation) act, 1908, sec. 175.

<sup>2</sup> *Ex parte Barnes* (1906), A. C. 146. *Civil, Naval, and Military Outfitters* (1899), 1 Ch. 215.

restore any such money or property to the company, and the order shall be deemed a final judgment.<sup>1</sup>

The receiver shall call separate meetings of creditors and contributories to determine whether an application shall be made to the court for appointing a liquidator in the place of the official receiver and determining whether application is to be made for the appointment of a committee of inspection consisting of creditors and contributories to act with the liquidator.<sup>2</sup>

Where the official receiver becomes the liquidator of a company he may, in his discretion, apply to the court for the appointment of a special manager with such powers and for such time as the court may direct, and the special manager so appointed shall give such security and account in such manner as the board may direct.<sup>3</sup>

An account called the "Companies liquidation account" shall be kept by the board of trade with the Bank of England, and all moneys received by the board in respect of proceedings under this act in connection with the winding up of companies in England shall be paid to that account.<sup>4</sup>

Whenever the balance of this general account is in excess of the immediate requirements of the board, it may be invested in Government securities, and the dividends shall be considered in fixing fees payable in winding-up proceedings.<sup>5</sup>

When the committee of inspection deems the balance to the credit of the company to be in excess of immediate requirements, the board shall invest the excess in Government securities and credit the dividends to the company.<sup>6</sup>

When the balance to the credit of any company's account with the board of trade exceeds £2,000, and the liquidator notifies the board that the excess is not required, the company shall be entitled to 2 per cent interest on the excess.<sup>6</sup>

Every liquidator shall, at least twice a year, render to the board of trade an account of his receipts and payments, which shall be audited by the board, summarized, and sent to creditors and contributors, a copy being re-

<sup>1</sup> Companies (consolidation) act, 1908, sec. 215.

<sup>2</sup> Companies (consolidation) act, 1908, secs. 152, 160.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 161.

<sup>4</sup> Companies (consolidation) act, 1908, sec. 229.

<sup>5</sup> Companies (consolidation) act, 1908, sec. 230.

<sup>6</sup> Companies (consolidation) act, 1908, sec. 231.

tained by the board for the inspection of any person interested.<sup>1</sup>

The board may direct a local investigation into the books and vouchers of the liquidator, and may, in its discretion, apply to the court to examine him or any other person on oath concerning the wind-up of any company.<sup>2</sup>

The board shall take cognizance of the conduct of liquidators of companies being wound up by the court, and, if they do not observe the requirements imposed upon them by the statute or rules, or a complaint is made by any creditor or contributory, the board shall inquire into the matter and take such action as it may think expedient.<sup>3</sup>

Upon the conclusion of his duties the liquidator shall report to the board of trade, and after consideration of the report and any objection urged against his release by a creditor or contributory the board shall grant or withhold his release accordingly, subject to an appeal to the high court.<sup>3</sup>

An order of the board of trade releasing the liquidator shall discharge him from all liability, but may be revoked on proof that it was obtained by fraud or by suppression of any material fact.<sup>4</sup>

In the absence of a committee of inspection appointed to act with the liquidator, the board of trade may do any act that the committee might do under the act. Under the rules of the board of trade the committee of inspection, consisting of creditors and contributories, assists the liquidator in the administration of the assets of the company.

The board of trade may, with the approval of the treasury, appoint such additional officers as may be required for winding up companies, and may remove any person so appointed.<sup>5</sup>

An inspector general in companies liquidation was appointed in 1891, to whom the official receivers of the board of trade throughout the country report in connection with matters arising under the companies act.<sup>6</sup>

---

<sup>1</sup> Companies (consolidation) act, 1908, sec. 155.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 159.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 157.

<sup>4</sup> Companies (consolidation) act, 1908, secs. 152, 160; Statutory Rules and Orders, 1909, p. 95.

<sup>5</sup> Companies (consolidation) act, 1908, sec. 233.

<sup>6</sup> Statutory Rules and Orders, 1891.

The officers of the courts winding up companies shall report to the board of trade at such times and in such manner as may be required, and from those returns the board shall prepare books which shall be open for public information under the regulations of the board.<sup>1</sup>

The lord chancellor may, with the concurrence of the president of the board of trade, make general rules for carrying into effect the objects of this act so far as it relates to the winding up of companies in England.<sup>2</sup>

Such rules shall be laid before Parliament and shall be judicially noticed and shall have the force of law.<sup>3</sup> (Rules made under this authority may be found in Statutory Rules and Orders, 1909, pp. 61-203.)

The accounts of the board of trade in relation to the winding up of companies in England shall be audited in such manner as the treasury may direct, and the board shall make such returns as the treasury direct<sup>4</sup> for the purposes of the account to be laid before Parliament.

*Defunct companies.*—Where the registrar of companies has reasonable cause to believe that a company is not carrying on business, he shall send an inquiry by mail to its registered office, and in default of an answer in one month shall in 14 days after the expiration of the month send a second, after which in default of an answer for one month a notice will be published in the Gazette that unless cause is shown to the contrary within three months the company shall be removed from the register and dissolved.

The registrar may, under similar conditions, remove a company from the register when he has reasonable cause to believe either that no liquidator is acting or that the affairs of the company are fully wound up and the returns required to be made by him have not been made for six months after a demand for them has been made.

The court may restore any company to the register if, on the application of the company, or any member or creditor, it is satisfied that the company was carrying on business, or otherwise that it is just that the company be restored to the register upon such conditions as the court may deem fit, and the company shall be deemed to have continued in existence as if its name had not been struck off.<sup>4</sup>

<sup>1</sup> Companies (consolidation) act, 1908, sec. 235.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 237.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 234.

<sup>4</sup> Companies (consolidation) act, 1908, sec. 242.

The board of trade shall cause an annual report of the matters within this act to be prepared and laid before both Houses of Parliament.<sup>1</sup>

#### REPORTS OF THE BOARD OF TRADE.

The publicity afforded by the law has taken two forms, the annual reports of the board of trade, submitted to Parliament in accordance with the act, and the information required to be filed and open to the inspection of the public.

With the information available at the office of the registrar of companies, and from the reports of the official receiver on companies wound up, the board of trade has been able to report upon improper methods of promotion or management and common causes of failure during the previous year. While thus enabled to observe the deficiencies of the law, it has, by means of the same information, been possible to report upon the effect of each amendment. The reports also contain typical cases illustrating various causes of failure, often accompanied with frank comment upon the methods employed by the promoters or officers, and the board has repeatedly called the attention of the public to the provisions of the law intended for their protection.

In addition to the above, each report contains detailed statistics in respect of companies registered or wound up during the preceding year.

The following extracts taken from the first annual report of the board of trade (1891) illustrate the character of these reports:

But perhaps the most frequent of all the abuses arising in connection with the formation of companies lies in the exercise of the power by which the directors proceed to allotment on a purely nominal share subscription. Forgetful of this fact innumerable cases have occurred where persons have been induced to subscribe for shares in a company believing that it would start possessed of ample means with which to carry out the objects for which it was formed, and where they subsequently found that by the act of allotment upon a merely nominal subscription the directors had compelled them to become partners in a company which was doomed to failure by the total inadequacy of its resources. This evil is aggravated by the fact that the directors are in the majority of cases the nominees of the promoters, and that it is, as a rule, [to] the interest of the latter that an allotment should be made.

---

<sup>1</sup> Companies (consolidation) act, 1908, sec. 283.



In regard to some of these matters, the evils referred to may, to some extent, be capable of mitigation by legislation, but it will probably be found impossible to guard against all the ever-changing and endless devices of unscrupulous promoters, and the most effective remedy will probably be found in the exercise of greater caution and discrimination on the part of the investing public.

\* \* \* \* \*

Again, some of the companies were formed merely for the purpose of carrying out an idea, not accompanied by the acquisition of any property or rights—sometimes an idea involving great benefit to the community, if it could be properly carried out. The failure of such companies is not to be taken as showing that the idea in itself was erroneous, but merely that the means adopted were unsuitable or insufficient. In all these cases, the amount of capital subscribed by the public was wholly inadequate for the purposes of the company, as judged even by the estimate of its promoters on its formation. The fact is, the directors should never have gone to allotment; and in doing so they entirely neglected and sacrificed the interests of the subscribers. In many cases what they did was simply to seize the moneys of a mere handful of subscribers, and to use them in paying the expenses of promotion and the other preliminary expenses of the company.

In discussing the failures of the past year in its eighteenth annual report, the board of trade (1908) cited the following case:

Brazilian Rubber Plantations & Estates (Ltd.) (High Court). This company was formed on the 31st of January, 1906, with a nominal capital of £180,000, for the purpose of acquiring and developing rubber estates in Brazil.

A few months prior to the formation of the company the original vendor of these estates sold them for £15,000. The purchaser in his turn sold them in October, 1905, to the promoters for £20,000. In January, 1906, the promoters formed a syndicate to acquire the property for £50,000, and through the medium of the syndicate promoted the company and sold the property to it for £150,000 on the 31st of January, 1906. This was a grossly inflated figure, no change having taken place in the property since the previous October, when it was sold by the original vendor for £15,000.

The company's prospectus, which was issued on the 1st of February, 1906, the day after the registration of the company, contained various misstatements, which are set out in the official receiver's report, and among them the official receiver refers to the following paragraphs:

"The area of the estates, which are freehold and unencumbered, is approximately 12,500 acres.

"The distance from the estates to the railway is about 12 miles on an easy gradient."

These two statements are said by the directors to be based partly on a letter to the effect that mules carried the produce to the railway, about 12 miles distant. The word "mules" in the letter, the directors state, was misread "miles," and, 20 miles being taken to mean 20 square miles, they considered that they

were moderate when they set down the 20 square miles in the prospectus as containing only 12,500 English acres.

The official receiver reported to the court that in his opinion fraud had been committed by the promoters and by some of the directors, and a public examination has been held by the court of the persons reported against by the official receiver.

The nineteenth annual report (1909) contains the following:

\* \* \* \*

Another instance of the way in which persons disregard information which is made available by law for their protection is afforded by the case of The Bee & the Bells Refreshment Contracting Syndicate (Ltd.), (Leeds). This company was registered in October, 1909, with a nominal capital of £5,000 in £1 shares, as a private company. The object of forming the company was to enable the promoter (who was a refreshment caterer and who had obtained the exclusive right to supply refreshments on the aviation grounds at Blackpool during the flying week) to carry the business through without personal liability. Though the nominal capital was £5,000, the capital subscribed for cash was £2 only, and this fact was open to any inquirer at Somerset House. With this capital of £2 only at his back, the company managed to incur liabilities to the extent of £1,551, and the official receiver estimates that the net loss to creditors will amount to 19s. in the pound.

The following extract is from the annual report for the year 1910:

*Insurance companies.*—There have been several important failures during the past year of companies carrying on various forms of insurance business. Of these failures that of the Law Car & General Insurance Corporation (Ltd.), is, so far as figures are concerned, the most important, but the National Free Homes Association (Ltd.) is a very bad example of the companies which cater for poor people and induce them to part with their savings. This latter company received upward of £17,000 in small sums from poor people, and practically the whole of this sum was absorbed by the directors and officials in the payment of their own salaries.

#### INFORMATION AVAILABLE TO THE PUBLIC.

The following information is open to the inspection of the public at the office of the registrar of companies, with the exception of one or two items, where, as indicated, the document is for the inspection of members or contributories only.

As an indication of the actual use of this information by the public, the registrar of companies reported in 1895 that over 100 persons searched the files daily.

1. The memorandum of association, which must state:

(a) The name of the company, with "limited" as the last word of the name.

(b) Location of registered office.

(c) Objects of company.

(d) That the liability of its members is limited.

(e) The amount of capital and number of shares.

(f) The names of each subscriber and amount of stock subscribed for.<sup>1</sup>

2. Any change of name by company.<sup>2</sup>

3. Any alterations in memorandum of association.<sup>3</sup>

4. Articles of association provided by the company (if any), or those provided by the act of 1908.<sup>4</sup>

5. A list of members of the company, a list of all persons who have ceased to be members, their names, addresses, and occupations, the number of shares held by each, and the date of all transfers of stock.<sup>5</sup>

NOTE.—These requirements as to the publicity of lists of members of companies and their holdings are in marked contrast with those existing in the United States. The laws of 50 States and Territories in respect of the accessibility of this information may be classified as follows:

Open to the public, 6; two of these fail to provide a penalty for noncompliance. Open to persons "interested," 2; one of these fails to provide a penalty for noncompliance. Open to stockholders and creditors, 14; three of these fail to provide a penalty for noncompliance. Open to stockholders only, 21; three of these fail to provide a penalty for noncompliance. Open to creditors only, 1. List required to be kept, but no provision for access, 4. No provision relating to this subject, 2. Total, 50. (Corporation Manual, 1910.)

6. A summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, specifying—

(a) The share capital, and the number of shares.

(b) The number of shares taken from the commencement of the company to the date of the return.

(c) The amount called up on each share.

(d) The total amount of calls received.

(e) The total amount of calls unpaid.

(f) The total amount of the sums (if any) paid by way of commission in respect of any shares or debentures, or allowed by way of discount in respect of any debentures, since the date of the last return.

<sup>1</sup> Companies (consolidation) act, 1908, sec. 13.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 8.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 9.

<sup>4</sup> Companies (consolidation) act, 1908, sec. 11.

<sup>5</sup> Companies (consolidation) act, 1908, sec. 26.

- (g) The total number of shares forfeited.
- (h) The total amount of shares or stock for which share warrants are outstanding at the date of the return.
- (i) The total amount of share warrants issued and surrendered, respectively.
- (j) The number of shares or amount comprised in each share warrant.
- (k) The names and addresses of directors.
- (l) The total debt due from the company in respect of all mortgages and charges.<sup>1</sup>
- (1) For the purpose of securing any issue of debentures.
  - (2) On uncalled capital.
  - (3) Created or evidenced by an instrument which, if executed by an individual, would require registration, as a bill of sale.
  - (4) On any land or interest therein.
  - (5) On any book debts.
  - (6) Or a floating charge on the undertaking or property of the company.<sup>2</sup>

7. A balance sheet audited by the company's auditors (except where the company is a private company), containing a summary of its share capital, its liabilities, and its assets, giving such particulars as will disclose the general nature of those liabilities and assets, how the values of the fixed assets have been arrived at, and showing the total amount (if any) paid in commissions for subscriptions to shares or debentures,<sup>3</sup> but it need not include a statement of profit and loss.<sup>1</sup>

8. A statutory report, certified by two directors, a copy of which has been sent to every member of the company at least seven days before a general meeting, called the statutory meeting, held not less than one month nor more than three months from the date at which the company is entitled to commence business.

The obvious purpose of the statutory meeting with its preliminary report is to put the shareholders of the company as early as possible in possession of all the important facts relating to the new company. \* \* \* Furnished with these particulars, the shareholders are to have an opportunity of meeting and discussing the whole situation—the management, methods, and prospects of the company. If the shareholders fail to do so, they have only themselves to blame.<sup>4</sup>

<sup>1</sup> Companies (consolidation) act, 1908, sec. 26.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 93.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 90.

<sup>4</sup> Palmer's Company Law (7th ed.), p. 158.

This report must show—

(a) The total shares allotted, distinguishing shares allotted as fully or partly paid up or otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted.

(b) The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid.

(c) An abstract of the receipts of the company on account of its capital, whether from shares or debentures, and of the payments made thereout, up to within seven days of the date of the report, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company.

(d) The names, addresses, and descriptions of the directors, auditors, managers, and secretary.

(e) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the proposed modification.<sup>1</sup> (This statutory report need not be forwarded or filed by a private company.)

9. Copies of every special and extraordinary resolution.<sup>2</sup>

10. Copies of every “prospectus” issued by or on behalf of a company, or any person who is or has been engaged in the formation of the company.

The discipline exercised by the act is largely by means of the provisions in respect of this document, which is defined as any “notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company.” To comply with the requirements of the act, the prospectus must show—

(a) The contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them, respectively; and the number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and

<sup>1</sup> Companies (consolidation) act, 1908, sec. 65.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 70.

(b) The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and

(c) The names, descriptions, and addresses of the directors or proposed directors; and

(d) The minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted; and

(e) The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and

(f) The names and addresses of the vendors of any property purchased or acquired by the company, or proposed to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a subpurchaser, the amount so payable to each vendor: *Provided*, That where the vendors, or any of them, are a firm the members of the firm shall not be treated as separate vendors; and

(g) The amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any), payable for good will; and

(h) The amount (if any) paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission: *Provided*, That it shall not be necessary to state the commission payable to subunderwriters; and

(i) The amount or estimated amount of preliminary expenses; and

(j) The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment; and

(k) The dates of and parties to every material contract and a reasonable time and place at which any material contract or a copy thereof may be inspected: *Provided*, That this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus; and

(l) The names and addresses of the auditors (if any) of the company; and

(m) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person, either to induce him to become, or to qualify him as, a director or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; and

(n) Where the company is a company having shares or more than one class the right of voting at meetings of the company conferred by the several classes of shares. respectively.<sup>1</sup>

11. A company which does not issue a prospectus shall not allot any shares or debentures unless there has been filed with the registrar of companies a statement in lieu of a prospectus signed by every person named as a director or a proposed director and containing the particulars set out in the following form.<sup>2</sup> (A private company is not required to file a prospectus or a statement in lieu of a prospectus.)

<sup>1</sup> Companies (consolidation) act, 1908, sec. 81.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 82.

*Statement in lieu of prospectus filed by ——— (Ltd.), pursuant to section 82 of the companies (consolidation) act, 1908. Presented for filing by ———.*

| The nominal share capital of the company—   | £.....   |
|---|--|
| Divided into.....   | (Shares of £..... each.<br>Shares of £..... each.<br>Shares of £..... each.  |
| Names, descriptions, and addresses of directors or proposed directors.....  |  |
| Minimum subscription (if any) fixed by the memorandum or articles of association on which the company may proceed to allotment.....   |  |
| Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.....   | (1. .... shares of £..... fully paid.<br>2. .... shares upon which £..... per share credited as paid.                    |
| The consideration for the intended issue of those shares and debentures.....  | (3. .... debenture, £.....<br>4. Consideration.  |
| Names and addresses of vendors <sup>1</sup> of property purchased or acquired or proposed to be purchased <sup>2</sup> or acquired by the company.....  |  |
| Amount (in cash, shares, or debentures) payable to each separate vendor.....  |  |
| Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for good will.....  | { Total purchase price...£.....<br>Cash.....£.....<br>Shares.....£.....<br>Debentures.....£.....<br>Good will.....£..... |
| Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company, on.....   | { Amount paid.<br>Amount payable.  |
| Rate of the commission.....   | Rate, per cent.  |
| Estimated amount of preliminary expenses.....   | £.....   |
| Amount paid or intended to be paid to any promoter.....   | { Name of promoter.<br>Amount, £.....<br>Consideration.  |
| Consideration for the payment.....  |  |
| Dates of and parties to every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the filing of this statement).....  |  |
| Time and place at which the contracts of copies thereof may be inspected.....   |  |
| Names and addresses of the auditors of the company (if any).....  |  |
| Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him to become, or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company..... |  |
| Whether the articles contain any provisions precluding holders of shares or debentures receiving and inspecting balance sheets or reports of the auditors or other reports.....   | Nature of the provisions.  |

<sup>1</sup> For definition of vendor see section 81 (2) of the companies (consolidation) act, 1908.

<sup>2</sup> See section 81 (3) of the companies (consolidation) act, 1908.

(Signatures of the persons above named as directors or proposed directors, or of their agents authorized in writing.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Notice of the consolidation or division of share capital into shares of a larger amount, or the conversion



of shares into stock, or a reconversion of stock into shares shall be filed with the registrar of companies.<sup>1</sup>

13. Copy of order of the court approving any reduction of capital.<sup>2</sup>

14. Particulars of any mortgage or charge for the purpose of securing any issue of debentures, or on uncalled share capital, or created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale, or on any land or interest therein, or on book debts, or a floating charge on the undertaking or property of the company, together with a copy of the instrument.<sup>3</sup>

15. Particulars as to debentures as follows: The total amount secured by the series, the dates of the resolutions authorizing the issue, the date of the deed (if any), a general description of the property charged, the names of the trustees (if any) for the debenture holders, the rate per cent of any commission paid for subscriptions, together with the deed containing the charge, or if there is no such deed, a copy of one of the debentures.<sup>4</sup>

16. Notice of the appointment of a receiver.<sup>5</sup>

17. Semiannual abstract of receipts and disbursements of a receiver, and a notice that he has ceased to act.<sup>6</sup>

18. Notice of any winding-up order made by the court.<sup>6</sup>

19. A copy of the report of the official liquidator of a company being wound up by the court, showing receipts and disbursements and the progress of the liquidation.<sup>7</sup> (For the inspection of creditors and interested persons only.)

20. A statement to the official receiver by the directors and chief officer of a company being wound up by the court, containing particulars of its assets and liabilities, names, residences, and occupations of its creditors, the securities held by them, respectively, the dates when such securities were given, and such further information as may be prescribed or as the receiver may require.<sup>8</sup> (This is open to inspection by creditors or contributors only.)

<sup>1</sup> Companies (consolidation) act, 1908, sec. 42.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 51.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 93.

<sup>4</sup> Companies (consolidation) act, 1908, sec. 94.

<sup>5</sup> Companies (consolidation) act, 1908, sec. 95.

<sup>6</sup> Companies (consolidation) act, 1908, sec. 143.

<sup>7</sup> Companies (consolidation) act, 1908, sec. 155.

<sup>8</sup> Companies (consolidation) act, 1908, sec. 147.

21. Notice that a meeting of the company, called by the liquidator in case of a voluntary winding up, for the purpose of explaining his final account, has been held.

22. Three months after registration of this notice the company shall be deemed dissolved, unless the dissolution is deferred by the court for cause shown by an interested party.<sup>1</sup>

23. A copy of any order of a court declaring a dissolution void upon the application of the liquidator or other interested party within two years of the date of the original order of dissolution.<sup>2</sup>

*Registration office and fees.*—There shall be offices for the registration of companies at such places as the board of trade think fit, and documents kept by the registrar may be inspected by any person, who may also obtain certified copies upon the payment of reasonable fees for such inspection or copies. A certified copy so obtained shall be of equal validity with the original in all legal proceedings.<sup>3</sup>

24. A return of allotments of shares, from both private and public companies, stating the number and nominal amount of the shares in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due on each share, and in the case of shares allotted as fully or partly paid up otherwise than in case, a contract in writing constituting the title of the allottee, together with any contract of sale or for services or other consideration in respect of which the allotment was made, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted. In the absence of a written contract the particulars indicated on the following form shall be filed with the registrar.<sup>4</sup>

---

<sup>1</sup> Companies (consolidation) act, 1908, sec. 195.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 223.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 243.

<sup>4</sup> Companies (consolidation) act, 1908, sec. 88, Form 52, order of 1909.

*Particulars prescribed under section 88, subsection (2). Filed by ——— (Ltd.). Presented for filing by ———.*

[In cases where a contract such as is mentioned in paragraph (b) of subsection (1) of section 88 of the companies (consolidation) act, 1908, is not reduced to writing, the company must, within the time limited in the said section, file with the registrar of joint-stock companies the following particulars of the contract, which particulars must be stamped with the same stamp duty as would have been payable if the contract had been reduced to writing.]

|  |        |
|--|--------|
| (1) The number of shares, in whole or in part, allotted for a consideration other than cash.....   | .....  |
| (2) If the consideration for the allotment of any shares is services, or any consideration other than that mentioned below in part 3, state what such consideration consists of.....   | .....  |
| (3) If the consideration for the allotment of any shares is a sale of property, or the agreement for sale of property, state fully the consideration for, and other terms of, such sale or agreement for sale.....   | .....  |
| (4) Give full particulars, in the form of the following table, of the property which is the subject of the sale, showing in detail how the total consideration is apportioned between the respective heads:  |        |
| Equitable estates, or interests in freeholds and leaseholds, whether in the United Kingdom or abroad (which includes hereditaments subject to a legal mortgage).....   | £..... |
| Patents, licenses, trade-marks, and copyrights.....  | £..... |
| Good will.....   | £..... |
| Fixtures and fittings.....   | £..... |
| Books and other debts (including money on deposit at bank or elsewhere).....   | £..... |
| Benefit of contracts.....  | £..... |
| Other property, viz: ———.....  | £..... |
| Total.....   | £..... |
| (5) If the consideration payable is partly in respect of a sale of property or agreement for a sale of property and partly in respect of some other consideration, state fairly how much of the amount of the consideration is attributable to each of the heads of the property sold or agreed to be sold and how much to such other consideration..... | .....  |
| (6) If the consideration payable consists in the assumption by the purchaser of liabilities to third persons, specify the total amount of such liabilities.....  | .....  |

\_\_\_\_\_  
(Signature.)

(Designation of position in relation to the company.)

Date \_\_\_\_\_.

#### PENALTIES.

The provisions of the act of 1908 are enforced by a number of penalties, the most important of which are the following:

Default in filing a copy of the prospectus with the registrar of companies.

Penalty: The company, and every person knowingly a party to the issue of the prospectus, is liable to a fine not exceeding £5 for every day from the date of issue until a copy is filed.<sup>1</sup>

Untrue statements in a prospectus.

Penalty: Every person shall be liable to compensate all subscribers for loss sustained by reason of such untrue statement, unless he had reasonable grounds for belief that the statement was true, or that, having consented to become a director, he withdrew his consent, and that the prospectus was issued without his consent; or that, on becoming aware of its issue without his consent, he gave public notice of the fact.<sup>2</sup>

Unauthorized use of director's name in a prospectus.<sup>2</sup>

<sup>1</sup> Companies (consolidation) act, 1908, sec. 80.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 84.

Unauthorized use of name of a person as director in the list of directors filed with registrar of companies, upon application for registration of the company.

Penalty: The person applying for registration is liable to a fine not exceeding £50.<sup>1</sup>

Violation of the provisions of the act in respect of allotment.

Penalty: Allotment voidable for one month after holding statutory meeting, and any director who knowingly contravenes or permits the contravention of these provisions is liable to compensate the company and the allottee for any loss, damages, or costs sustained. Period of limitation, two years from date of allotment.<sup>2</sup>

A company shall not commence business or exercise borrowing powers unless—

Shares held subject to the payment of the whole amount in cash have been allotted to an amount not less in the whole than the minimum subscription, and

Every director has paid on each of his shares the same proportion that is payable on the allotment of shares offered to the public, and

There has been filed with the registrar of companies a statutory declaration by the secretary or a director that the above conditions have been complied with;

In the case of a company which does not issue a prospectus, there has been filed a statement in lieu of a prospectus.

Penalty: Any contract made before a company is entitled to commence business is provisional only, and shall not bind the company until that date. Every person responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding £50 for every day during which it continues.<sup>3</sup>

NOTE.—The above section does not apply to private companies.

Default of a limited company when allotting shares to file, within a month, a return showing the number and nominal amount of shares allotted, and amount paid or payable on each share; or, if shares are allotted as fully or partially paid up otherwise than in cash, to file a contract showing the title of allottee and any contract of sale, or for services, or other consideration for allotment, together with a return showing number and nominal amount of shares allotted, extent to which treated as paid up, and consideration for which allotted; or, if the contract above described be not in writing, to file the prescribed particulars of contract. (See form, p. —.)

Penalty: Every officer knowingly a party to the default is liable to a fine not exceeding £50 for every day during which default continues. Provided, that the court, in its discretion, may relieve from the penalty and extend the time for filing.<sup>4</sup>

Default in holding the statutory meeting or filing the statutory report.

Penalty: The company may be wound up by the court at the instance of a shareholder, and costs may be charged to any

<sup>1</sup> Companies (consolidation) act, 1908, sec. 72.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 86.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 87.

<sup>4</sup> Companies (consolidation) act, 1908, sec. 88.

person who, in the opinion of the court, is responsible for the default.<sup>1</sup>

Default in keeping at the company's registered office a list of directors or managers, with their names, addresses, and occupations; and in filing a copy of said list and all changes with the registrar of companies.

Penalty: The company, and every director and manager knowingly and willfully authorizing or permitting the default, is liable to a fine not exceeding £5 for each day of the default.<sup>2</sup>

Refusal to permit inspection of the company's register of members by any member gratis, and by any other person upon payment of 6d.; or—

Refusal to furnish copies upon payment of fees prescribed.

Penalty: The company, and every director and manager who knowingly authorizes or permits the refusal, is liable to a fine not exceeding £2 for each refusal, and a further fine of not exceeding £2 for each day during which the refusal continues, and the high court may compel an immediate compliance.<sup>3</sup>

Default in keeping a register of mortgages and charges showing particulars in each case.

Penalty: Every director, manager, or other officer of the company who knowingly and willfully authorizes or permits the omission of any entry is liable to a fine not exceeding £50.<sup>4</sup>

Default in furnishing the registrar with the particulars and a copy of any mortgage or charge on the property, capital, book debts, etc., of the company.

Penalty: Security is void against the liquidator or creditors, but without prejudice to the obligation to repay the money so secured, which becomes immediately payable.<sup>5</sup>

Default in filing with the registrar of companies the "particulars" of any mortgage or charge created by the company.

Penalty: The company, and every director, manager, secretary, or other person knowingly a party to the default, is liable to a fine not exceeding £50 for every day during which the default continues.<sup>6</sup>

Default in filing with the registrar of companies a copy of any mortgage or charge created by the company.

Penalty: The company, and every director, manager, and other officer of the company who knowingly and willfully authorized or permitted the default, is, without prejudice to any other liability, liable on summary conviction to a fine not exceeding £100.<sup>7</sup>

Default in indorsing upon any debenture or certificate of debenture stock, before delivery, a copy of the certificate of registration.

Penalty: Any person knowingly and willfully authorizing or permitting such default is, without prejudice to any other liability, liable on summary conviction to a fine not exceeding £100.<sup>8</sup>

<sup>1</sup> Companies (consolidation) act, 1908, secs. 129, 137 (b), 141 (2).

<sup>2</sup> Companies (consolidation) act, 1908, sec. 75.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 30.

<sup>4</sup> Companies (consolidation) act, 1908, sec. 100.

<sup>5</sup> Companies (consolidation) act, 1908, sec. 93.

<sup>6</sup> Companies (consolidation) act, 1908, sec. 99.

<sup>7</sup> Companies (consolidation) act, 1908, sec. 99 (2).

<sup>8</sup> Companies (consolidation) act, 1908, sec. 99 (2).

Default in permitting an inspection of the company's register of mortgages and charges by members of the company without charge, and by other persons upon payment of 1s., and

Default in permitting an inspection of copies of the instruments by members of the company without charge.

Penalty: Any officer refusing inspection, and every director and manager authorizing or knowingly and willfully permitting the refusal, is liable to a fine not exceeding £5 and a further fine not exceeding £2 for every day during which the refusal continues, and the high court may compel an immediate inspection.<sup>1</sup>

Default in permitting debenture holders and shareholders to inspect the register of debenture holders, and in furnishing copies to any debenture holder of any trust deed securing any issue of debentures, upon payment of the prescribed fee.

Penalty: The company, and every director or other officer who knowingly authorizes or permits the refusal, is liable to a fine not exceeding £5 and a further fine of not exceeding £2 for each day during which the refusal continues.<sup>2</sup>

Default in forwarding a copy of every special or extraordinary resolution to the registrar of companies.

Penalty: The company, and every director and manager who knowingly and willfully authorizes or permits any such default, is liable to a fine not exceeding £2 for every day during which the default continues.<sup>3</sup>

Default in annexing a copy of every special resolution in force to copies of the registered articles subsequently issued, or, where there are no registered articles, default in forwarding the resolution to any member upon payment of 1s.

Penalty: The company, and every director and manager knowingly and willfully authorizing or permitting the default, is liable to a fine not exceeding £1 for each copy in respect of which default is made.<sup>4</sup>

Default in indicating on copies of the memorandum of association issued any alteration of capital or shares.

Penalty: The company, and every director and manager who knowingly and willfully authorizes or permits the default, is liable to a fine not exceeding £1 for each copy so issued.<sup>4</sup>

Default in notifying the registrar of companies of any special resolution authorizing the increase of capital beyond its registered capital, or, in case of a company not having a share capital, of the increase in the number of members beyond the registered number.

Penalty: The company, and every director and manager who knowingly and willfully authorizes or permits the default, is liable to a fine not exceeding £5 for every day during which the default continues.<sup>5</sup>

Default in indicating a reduction of capital upon any copies of the memorandum of association subsequently issued.

<sup>1</sup> Companies (consolidation) act, 1908, sec. 101.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 102.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 70.

<sup>4</sup> Companies (consolidation) act, 1908, sec. 41.

<sup>5</sup> Companies (consolidation) act, 1908, sec. 44.

Penalty: The company, and every director and manager knowingly and willfully authorizing the default, is liable to a fine not exceeding £1 for each copy so issued.<sup>1</sup>

Default in disclosing to the court the name of any creditor entitled to object to the reduction of capital or misrepresenting the nature and amount of any claim.

Penalty: If any director, manager, or officer willfully is a party to or is privy to such concealment or misrepresentation, he shall be guilty of a misdemeanor.<sup>2</sup>

Default in filing with the registrar of companies an order of the court confirming any alteration in the memorandum of association with regard to the objects of the company.

Penalty: The company is liable to a fine not exceeding £10 for every day during which it is in default.<sup>3</sup>

Default in producing documents or giving answers required by inspectors appointed by the board of trade during an investigation demanded by the required number of stockholders.

Penalty: A fine not exceeding £5 for each offense.<sup>4</sup>

Default in notifying registrar of companies of the appointment of a receiver.

Penalty: The person obtaining the order, or appointed the receiver under the powers contained in any instrument, is liable to a fine not exceeding £5 for every day during which the default continues.<sup>5</sup>

Default by receiver appointed under the powers in any instrument, in filing an abstract of receipts and expenditures once in every half year, or in filing notice that he has ceased to act as receiver.

Penalty: A fine not exceeding £50.<sup>6</sup>

Destruction, mutilation, alteration, or falsification of any books, papers, or securities of any company being wound up with intent to defraud or deceive any person.

Penalty: Any director, officer, or contributory guilty of the above shall be liable to imprisonment for a term not exceeding two years, with or without hard labor.<sup>7</sup>

Default by the liquidator, in the case of a voluntary winding up, in filing a return to the registrar of companies of the holding of a general meeting for the purpose of laying his final accounts before it.

Default by any person applying for and securing an order of the court deferring the dissolution of the company in filing a copy of such order with the registrar of companies.

Penalty: A fine of £5 for every day during which the default continues.<sup>8</sup>

Forgery or alteration of any share warrant or coupon with intent to defraud, or falsely personating the owner of any share, thereby endeavoring to receive any money due to the true owner.

<sup>1</sup> Companies (consolidation) act, 1908, sec. 52.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 54.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 9 (7).

<sup>4</sup> Companies (consolidation) act, 1908, sec. 109.

<sup>5</sup> Companies (consolidation) act, 1908, sec. 94.

<sup>6</sup> Companies (consolidation) act, 1908, sec. 95.

<sup>7</sup> Companies (consolidation) act, 1908, sec. 216.

<sup>8</sup> Companies (consolidation) act, 1908, sec. 195.

Penalty: Any person guilty of the above shall be liable to penal servitude for life, or for any term not less than three years, in the discretion of the court.<sup>1</sup>

Engraving or making without lawful authority any plate, etc., of any share warrant or coupon of any company, or knowingly having such in custody.

Penalty: Penal servitude for not less than 3 nor more than 14 years, at the discretion of the court.<sup>2</sup>

If any person, on examination on oath authorized under this act, or in any affidavit or deposition in or about the winding up of any company, or otherwise in or about any matter arising under this act, willfully and corruptly gives false testimony, he shall be liable to the penalties for willful perjury.

Any person willfully making a statement false in any material particular, knowing it to be false, in any return, report, certificate, balance sheet, or other document relating to the conclusiveness of certificates of incorporation, appointments or advertisements of directors, commencement of business, returns as to allotments, statutory meetings, particulars as to directors and mortgage debt and the statement in the form of a balance sheet in the annual summary; appointment, remuneration, powers, and duties of auditors; obligations of companies where no prospectus is issued; registration of mortgages and charges; filing of accounts of receiver and manager; notice by liquidator in voluntary winding up of his appointment; rights of creditors in voluntary winding up; requirements as to companies established outside of the United Kingdom; annual report by board of trade, shall be guilty of a misdemeanor, and liable on conviction on indictment to imprisonment not exceeding two years, with or without hard labor, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labor, and in either case to a fine in lieu of or in addition to such imprisonment: *Provided*, That the fine imposed on summary conviction shall not exceed £100.<sup>3</sup>

If in any proceeding against a director of a company for negligence or breach of trust it appears that such person is or may be liable in respect of the negligence or breach of trust, but has acted honestly and reasonably and ought fairly to be excused, the court may relieve him, either wholly or partly, from his liability on such terms as seem proper.<sup>4</sup>

Any manager, director, or public officer of a body corporate who shall make, or concur in making, circulating, or publishing any written statement or account known to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate, or to induce any person to become a shareholder, or to intrust or advance any property to such body corporate, or to enter into any security for its benefit, shall be guilty of a misdemeanor, and liable to be kept in penal servitude for not less than three nor more than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labor, and with or without solitary confinement.<sup>4</sup>

<sup>1</sup> Companies (consolidation) act, 1908, sec. 38.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 281 and Schedule V.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 279.

<sup>4</sup> 25 and 26 Vict., chap. 96, sec. 84.



Default in furnishing members with a copy of the memorandum and articles of association upon the payment of 1 shilling.

Penalty: The company is liable to a fine not exceeding £1 for each offense.<sup>1</sup>

Default in displaying the name of the company on its place of business.

Penalty: The company is liable to a fine not exceeding £5 for each day, and every director and manager knowingly and willfully authorizing or permitting the default is liable to the like penalty.<sup>2</sup>

Default in displaying the name of the company on advertisements, official publications, negotiable instruments, etc., or the use of a seal without such name displayed thereon.

Penalty: Every director, manager, or officer authorizing the issue of the above is liable to a fine not exceeding £50, and is personally liable on the instrument unless duly paid by the company.<sup>3</sup>

*Name of company.*—The purpose of the legislature in requiring the publication of the company's name was that a company of limited liability should continually bring to the notice of those who might deal with it the fact that it is "limited."

See also *Atkin & Co. v. Wardle and others* (61 L. T., 23), in which the South Shields Salt Water Baths Co. (Ltd.) was misdescribed in a bill as the Salt Water Baths Co. (Ltd.). The directors were held personally liable on the bill.<sup>4</sup>

Default in notifying the registrar of companies of the situation of the registered office of the company and any change therein.

Penalty: A fine not exceeding £5 for every day during which the default continues.<sup>4</sup>

*Power of court to assess damages against delinquent directors.*—Where, in the course of winding up, it appears that any person who has taken part in the promotion, formation, management, or liquidation of the company has misapplied or otherwise become accountable for any property of the company, or has been guilty of a breach of trust, the court may examine into the conduct of such person and compel restoration of such money or property, or any part thereof, without prejudice to criminal liability.<sup>5</sup>

*Prosecution of delinquent directors.*—If it appears to the court, in the course of a winding up by or subject to the supervision of the court, that any past or present director, manager, officer, or member of the company has been guilty of any offense in relation to the company for which he is criminally responsible, the court may, on the application of any person interested in the winding up, or of its own motion, direct the liquidator to prosecute

<sup>1</sup> Companies (consolidation) act, 1908, sec. 18.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 63.

<sup>3</sup> Palmer's Company Law (7th ed.), p. 244.

<sup>4</sup> Companies (consolidation) act, 1908, sec. 62.

<sup>5</sup> Companies (consolidation) act, 1908, sec. 215.

for the offense, and may order the costs and expenses to be paid out of the assets of the company.<sup>1</sup>

If it appears to the liquidator in the course of a voluntary winding up that any past or present director, manager, officer, or member of the company, has been guilty of any offense in relation to the company for which he is criminally responsible, he, with the previous sanction of the court, may prosecute the offender, and all expenses properly incurred by him in the prosecution shall be payable out of the assets of the company, in priority to all other liabilities.<sup>2</sup>

When an official receiver of a company being wound up by the court reports that in his opinion fraud has been committed by any person in the promotion, formation, or management of the company, the court may subject such person to a public examination, in which the receiver, liquidator, creditor, and contributory may take part. Notes of the examination shall be taken down and may be used in evidence against the person so examined.<sup>3</sup>

The following table indicates the extent to which the provisions of the company law of England in respect to publicity have been adopted throughout the Empire:

---

<sup>1</sup> Companies (consolidation) act, 1908, sec. 217.

<sup>2</sup> Companies (consolidation) act, 1908, sec. 215.

<sup>3</sup> Companies (consolidation) act, 1908, sec. 175.

Table showing the more important information required to be filed at the registries of joint-stock companies mentioned below.

[Comparative analysis of the company laws of the United Kingdom, India, Canada, Australia, New Zealand, and South Africa, with a memorandum prepared for the Imperial conference, 1911, by direction of the board of trade. (Cd. 5864.)]

| Place of registration.        | Situation of registered office. | Memo-randum and articles of association. | List of directors.   | Pro-spectus. | State-ment in prospectus. | Con-tracts. | Return of allot-ments. | Partic-ulars as to capital, nominal, sub-scrib-ed and paid up. | List of share-holders. | Regis-ter of mort-gages, charges, and de-bentures. | Balance sheet.      | Special resolu-tion. | Extraor-dinary resolu-tion. | Wind-ing-up order. | Appoint-ment of receiver for de-benture holders. |
|-------------------------------|---------------------------------|--|----------------------|--------------|---------------------------|-------------|------------------------|--|------------------------|--|---------------------|----------------------|-----------------------------|--------------------|--|
| England and Ireland...        | Yes...                          | Yes...                                   | Yes...               | Yes...       | Yes...                    | Yes...      | Yes...                 | Yes...   | Yes...                 | Yes...   | Yes...              | Yes...               | Yes...                      | Yes...             | Yes...   |
| Scotland...                   | Yes...                          | Yes...                                   | Yes...               | Yes...       | Yes...                    | Yes...      | Yes...                 | Yes...   | Yes...                 | No...  | Yes...              | Yes...               | Yes...                      | Yes...             | Yes...   |
| India...                      | Yes...                          | Yes...                                   | Yes <sup>1</sup> ... | No...        | Yes...                    | Yes...      | No...                  | Yes...   | Yes...                 | No...  | Yes...              | Yes...               | No...                       | No...              | No...  |
| Dominion of Canada...         | No...                           | Yes <sup>2</sup> ...                     | No...                | No...        | No...                     | No...       | No...                  | Yes...   | No <sup>3</sup> ...    | No...  | No...               | No...                | No...                       | No...              | No...  |
| Ontario...                    | Yes...                          | Yes...                                   | Yes...               | Yes...       | Yes...                    | No...       | Yes...                 | Yes <sup>4</sup> ...   | No <sup>5</sup> ...    | No...  | No...               | No...                | No...                       | No...              | No...  |
| Quebec...                     | No...                           | No <sup>6</sup> ...                      | No...                | No...        | No...                     | No...       | No...                  | Yes...   | No...                  | No...  | No...               | No...                | No...                       | No...              | No...  |
| Nova Scotia...                | Yes...                          | Yes...                                   | Yes...               | No...        | No...                     | No...       | No...                  | No...  | No...                  | No...  | No...               | No...                | No...                       | No...              | No...  |
| New Brunswick...              | No...                           | Yes...                                   | Yes...               | No...        | No...                     | No...       | No...                  | No...  | No...                  | No...  | No...               | No...                | No...                       | No...              | No...  |
| Manitoba...                   | No...                           | Yes...                                   | Yes...               | No...        | No...                     | No...       | No...                  | Yes...   | Yes...                 | No...  | No...               | No...                | No...                       | No...              | No...  |
| Northwest...                  | Yes...                          | Yes...                                   | Yes...               | No...        | No...                     | Yes...      | Yes...                 | Yes...   | No...                  | No...  | No...               | No...                | No...                       | No...              | No...  |
| Prince Edward Island...       | No...                           | Yes...                                   | No...                | No...        | No...                     | Yes...      | No...                  | No...  | No...                  | No...  | No...               | No...                | No...                       | No...              | No...  |
| British Columbia...           | Yes...                          | Yes...                                   | Yes...               | No...        | No...                     | Yes...      | Yes...                 | Yes...   | Yes...                 | Yes...   | Yes...              | Yes...               | Yes...                      | Yes...             | Yes...   |
| Alberta...                    | Yes...                          | Yes...                                   | Yes...               | Yes...       | No...                     | Yes...      | Yes...                 | Yes...   | Yes...                 | No...  | No...               | Yes...               | No...                       | No...              | No...  |
| Saskatchewan...               | Yes...                          | Yes...                                   | Yes...               | Yes...       | No...                     | Yes...      | Yes...                 | Yes...   | Yes...                 | No...  | No...               | Yes...               | No...                       | No...              | No...  |
| Commonwealth of Aus-tralia... |                                 |  |                      |              |                           |             |                        |  |                        |  |                     |                      |                             |                    |  |
| New South Wales...            | Yes...                          | Yes...                                   | Yes <sup>1</sup> ... | No...        | No...                     | Yes...      | No...                  | Yes...   | Yes...                 | No...  | No <sup>5</sup> ... | Yes...               | Yes <sup>6</sup> ...        | Yes...             | No...  |
| Victoria...                   | Yes...                          | Yes...                                   | Yes...               | Yes...       | Yes...                    | Yes...      | Yes...                 | Yes...   | Yes...                 | Yes...   | Yes...              | Yes...               | Yes...                      | Yes...             | Yes...   |
| South Australia...            | Yes...                          | Yes...                                   | Yes <sup>1</sup> ... | Yes...       | Yes...                    | Yes...      | No...                  | Yes...   | Yes...                 | No...  | No...               | Yes...               | Yes...                      | Yes...             | No...  |
| Queensland...                 | Yes...                          | Yes...                                   | Yes <sup>1</sup> ... | No...        | No...                     | Yes...      | No...                  | Yes...   | Yes...                 | No...  | No...               | Yes...               | No...                       | Yes...             | No...  |
| Tasmania...                   | Yes...                          | Yes...                                   | Yes <sup>1</sup> ... | No...        | No...                     | Yes...      | No...                  | Yes...   | Yes...                 | No...  | No...               | Yes...               | No...                       | Yes...             | No...  |
| Western Australia...          | Yes...                          | Yes...                                   | Yes <sup>1</sup> ... | Yes...       | Yes...                    | Yes...      | No...                  | Yes...   | Yes...                 | Yes...   | No...               | Yes...               | No...                       | Yes...             | No...  |
| New Zealand...                | Yes...                          | Yes...                                   | Yes...               | Yes...       | Yes...                    | Yes...      | Yes...                 | Yes...   | Yes...                 | Yes...   | No...               | Yes...               | No...                       | Yes...             | No...  |
| South Africa...               |                                 |  |                      |              |                           |             |                        |  |                        |  |                     |                      |                             |                    |  |
| Cape of Good Hope...          | Yes...                          | Yes...                                   | Yes <sup>1</sup> ... | No...        | No...                     | Yes...      | No...                  | Yes...   | Yes...                 | Yes...   | No...               | Yes...               | No...                       | Yes...             | No...  |
| Natal...                      | Yes...                          | Yes...                                   | Yes...               | No...        | Yes...                    | Yes...      | No...                  | Yes...   | No...                  | No...  | No...               | No...                | No...                       | No...              | No...  |
| Transvaal...                  | Yes...                          | Yes...                                   | Yes...               | Yes...       | Yes...                    | Yes...      | Yes...                 | Yes...   | Yes...                 | No...  | Yes...              | Yes...               | Yes...                      | Yes...             | Yes...   |
| Orange River Colony...        | Yes...                          | Yes...                                   | Yes...               | No...        | No...                     | No...       | No...                  | No...  | No...                  | No...  | No...               | No...                | No...                       | No...              | No...  |
| British South Africa Company. | Yes...                          | Yes...                                   | No...                | No...        | No...                     | Yes...      | No...                  | Yes...   | Yes...                 | No...  | No...               | Yes...               | No...                       | Yes...             | No...  |

<sup>1</sup> To be filed only by companies not having a capital divided into shares.<sup>2</sup> Application or petition for letters patent to be filed.<sup>3</sup> A list of those who have ceased to be shareholders to be filed on the written request of the provincial secretary.<sup>4</sup> When a written request is made therefore by the provincial secretary, but not otherwise.<sup>5</sup> Balance sheets have to be filed by foreign companies carrying on business in New South Wales.<sup>6</sup> Extraordinary resolution for voluntary winding up only.

OUTLINE OF THE HISTORY AND ORGANIZATION OF BOARD OF  
TRADE OF ENGLAND.

Prior to 1782 there existed in England a body known as the Board of Trade and Plantations, whose duties were, when requested, to consult and advise the Government on commercial questions. Being advisory, with no administrative powers and only intermittently consulted, it became a body of no practical importance, and was abolished by 22 George III (c. 82, s. II, XV, 1782), and its duties transferred to a committee of the privy council.

In 1786 a large committee was appointed for the consideration of all matters relating to trade and foreign plantations, the appointment being based on the act of 1782.<sup>1</sup>

This new committee was, like its predecessor, purely advisory. It was entirely discretionary with the Government officials whether or not they should consult the committee at all, or act on its advice if obtained. During the early years of its existence the business of the committee was done by resolutions passed at a board consisting of such members as chose to attend, the average (according to the minute books from 1786 to 1797) being only seven or eight. As the president was the only member who was regularly present, and as he was competent to act alone (the order in council by which the committee was appointed not requiring a quorum), the business was gradually drawn into the president's hands, more especially as the board's administrative functions began to arise. Thus, while the board of trade presents outwardly the appearance of a permanent staff, under a secretary, there exists behind it a dormant committee of the privy council, which, while seldom heard of, is nevertheless recognized.

It was not until 1840 that it was intrusted with any great administrative powers, when, by 3 and 4 Victoria (c. 97), the duty of settling and approving the by-laws of railways was imposed upon it. From that date the regulative powers have been increased. The president of the board is usually a member of the cabinet. The board of trade has become an administrative and regulative body, the duties imposed upon it being so numerous

---

<sup>1</sup> Order in council, 23d August. 1786.

and varied that seven departments have been created to perform them, namely:

I. The statistical and commercial department, which, in addition to the preparation and publication of commercial statistics, advises other offices when requested, and these requests have in late years been more frequent.

II. The railway department, which, besides administering railway legislation, performs duties not obviously connected with locomotion, such as the control of various matters connected with the metropolitan gas companies, patents, trade-marks, etc. The joint-stock companies registration office<sup>1</sup> is under this department. Annual reports and such special reports as may be ordered by Parliament are compiled by the staff.

III. The marine department.

IV. The harbor department.

V. The finance department. The bankruptcy acts, 1883 and 1890, and the companies (winding-up) act 1890, have placed the money produced by the realization of the assets of bankrupts and joint-stock companies which are in compulsory liquidation under the control of the board of trade, and this department has the custody of these funds.<sup>2</sup>

VI. The fisheries department.

VII. The bankruptcy department. The companies (winding-up) act of 1890 applied to the winding-up of insolvent companies some of the leading principles of bankruptcy law, namely, that of the official custody of the assets at the initial stage of the proceedings, with liberty to the creditors and contributories of the company to later substitute their own liquidator. The act also applied to winding-up of companies another principle, that of an official investigation into the causes of failure and the conduct of those responsible for the trading and financial transactions causing the insolvency. The act also provided for a public examination of promoters, directors, and officers, and for reports similar in some respects to the reports upon the bankrupt's conduct and affairs under the bankruptcy acts.

For the purpose of carrying this into effect official receivers are attached to the courts which have winding-

<sup>1</sup> 25 and 26 Vict., c. 89, companies act, 1862; 63 and 64 Vict., c. 48, companies act, 1900.

<sup>2</sup> Companies (winding-up) act, 53 and 54 Vict., c. 63, 1890; companies act, 63 and 64 Vict., c. 48, 1900.

up jurisdiction, and the board of trade is intrusted with power of control over the accounts and proceedings of liquidators of companies similar to that exercised over trustees in bankruptcy.<sup>1</sup>

---

<sup>1</sup> Companies (winding-up) act, 53 and 54 Vict., c. 63, 1890; companies act, 63 and 64 Vict., c. 48, 1900; Chitty's Digest of the Laws of England; Encyclopedia of Laws of England, 2d ed., vol. 11; companies act cited.

# BRITISH EMPIRE.

*List of company acts of the British Empire from 1862 to 1907, showing title of act and year of passage.*

| Year of pas-<br>sage.                                | Title of act.   | Year of pas-<br>sage. | Title of act.  |
|--|---|-----------------------|--|
| UNITED KINGDOM.                                      |   | CANADA—continued.     |  |
| 1862..   | Companies act.  | Ontario—Continued.    |  |
| 1864..   | Companies seals act.  | 1897..                | Chaps. 217, 219, 220 of laws of 1897 (3 acts).                   |
| 1867..   | Companies act.  | 1897..                | Joint stock companies winding up act.                            |
| 1870..   | Joint stock companies arrange-<br>ment act.   | 1902..                | Joint stock companies winding up<br>act (amendment).             |
| 1877..   | Companies act.  | 1900..                | Act respecting the licensing of<br>extraprovincial corporations. |
| 1879..   | Do.   | 1901..                | Do.  |
| 1880..   | Do.   | Quebec.               |  |
| 1883..   | Companies (colonial registers) act.   | 1888..                | Revised Statutes (arts. 4694 to 4793).                           |
| 1886..   | Companies act.  | 1895..                | Amendment.   |
| 1888..   | Preferential payments in bank-<br>ruptcy act.   | 1898..                | Do.  |
| 1897..   | Do.   | 1902..                | Do.  |
| 1890..   | Companies (memorandum of asso-<br>ciation) act.   | 1904..                | Do.  |
| 1890..   | Companies (winding up) act.   | 1904..                | Extraprovincial corporations.                                    |
| 1890..   | Directors' liability act.   | Nova Scotia.          |  |
| 1893..   | Companies (winding up) act.   | 1900..                | Nova Scotia companies act.                                       |
| 1898..   | Companies act.  | 1900..                | Companies (winding up) act.                                      |
| 1900..   | Do.   | 1900..                | Chap. 130, Revised Statutes.                                     |
| 1907..   | Do.   | 1902..                | Companies' act of 1900 (amend-<br>ment).                         |
| 1908..   | Do.   | 1903..                | Do.  |
| 1908..   | Companies (consolidation) act<br>(Dec. 21, 1908).   | 1904..                | Do.  |
| INDIA.   |   | 1905..                | Do.  |
| 1882..   | Indian companies act.   | 1906..                | Do.  |
| 1895..   | Indian companies (memorandum<br>of association) act, amending act<br>of 1882.   | 1900..                | Chap. 127, relating to foreign cor-<br>porations.                |
| DOMINION OF CANADA.                                  |   | 1903..                | Amendment.   |
| (As distinguished from the Cana-<br>dian Provinces.) |   | 1904..                | Do.  |
| 1902..   | Companies act.  | New Brunswick.        |  |
| 1904..   | Do.   | 1903..                | New Brunswick joint stock com-<br>panies act.                    |
|  | Companies may be incorpo-<br>rated either under Dominion<br>laws or those of the Provinces,<br>but the insolvency of companies<br>is a matter within the exclusive<br>jurisdiction of the Dominion. | 1904..                | New Brunswick joint stock com-<br>panies' act (amendment).       |
| CANADA.  |   | 1906..                | Do.  |
| Ontario.   |   | 1903..                | Consolidated Statutes, chap. 86.                                 |
| 1897..   | Ontario companies act.  | 1903..                | Companies winding-up act.  |
| 1898..   | Ontario companies act (amend-<br>ment).   | 1903..                | Extraprovincial corporations, li-<br>censing of.                 |
| 1899..   | Do.   | 1905..                | Extraprovincial corporations, li-<br>censing of (amendment).     |
| 1900..   | Do.   | Manitoba.             |  |
| 1901..   | Do.   | 1902..                | Manitoba joint stock companies<br>act.                           |
| 1902..   | Do.   | 1904..                | Manitoba joint stock companies<br>act (amendment).               |
| 1897..   | Ontario mining companies incor-<br>poration act.  | 1905..                | Do.  |
| 1897..   | An act, chap. 215 of laws of 18 7.  | 1906..                | Manitoba joint stock companies<br>act (amendment) (2).           |
| 1897..   | Directors' liability act.   |                       |  |

| Year of passage.                          | Title of act.                            | Year of passage.                     | Title of act.  |
|---|--|--------------------------------------|--|
| CANADA—continued.                         |  | COMMONWEALTH OF AUSTRALIA—continued. |  |
| <i>British Columbia—Continued.</i>        |  | <i>Tasmania—Continued.</i>           |  |
| 1899..                                    | Joint stock companies winding-up act.    | 1896..                               | Companies act (amendment).   |
| 1902..                                    | Chap. 29, laws of 1902.                  | 1898..                               | Foreign companies act, No. 2.  |
| 1903..                                    | Foreign corporation act.                 | 1901..                               | Foreign companies amendment act.   |
| <i>Province of Northwest Territories.</i> |  | 1902..                               | Do.  |
| 1901..                                    | Companies ordinance.                     | 1905..                               | Do.  |
| 1903..                                    | Foreign companies ordinance.             | 1884..                               | Mining companies act.  |
| 1903..                                    | Companies winding-up ordinance.          | 1895..                               | Mining companies (foreign) act.  |
| 1903..                                    | Trust companies ordinance.               | 1896..                               | Mining companies amendment act.  |
| <i>British Columbia.</i>                  |  | 1900..                               | Do.  |
| 1897..                                    | Companies act (a consolidation act).     | <i>Western Australia.</i>            |  |
| 1898..                                    | Companies act (amendment).               | 1893..                               | Companies act (a consolidation act).                                     |
| 1899..                                    | Do.                                      | 1896..                               | Companies act amendment act.   |
| 1900..                                    | Do.                                      | 1897..                               | Do.  |
| 1901..                                    | Do.                                      | 1898..                               | Do.  |
| 1902..                                    | Companies act (amendment) (2).           | 1899..                               | Companies duty act.  |
| 1904..                                    | Companies act (amendment).               | 1899..                               | Companies act amendment act.   |
| 1905..                                    | Do.                                      | 1902..                               | Do.  |
| 1906..                                    | Do.                                      | <i>New Zealand.</i>                  |  |
| 1898..                                    | Mortgage debenture act.                  | 1903..                               | Companies act (a consolidation act).                                     |
| 1903..                                    | Companies winding-up act.                | 1904..                               | Mining companies act.  |
| 1898..                                    | Companies act (since repealed).          | SOUTH AFRICA.                        |  |
| COMMONWEALTH OF AUSTRALIA.                |  | <i>Cape of Good Hope.</i>            |  |
| <i>New South Wales.</i>                   |  | 1892..                               | Companies act.   |
| 1899..                                    | Companies act (a consolidation act).     | 1895..                               | Company debenture act.   |
| 1900..                                    | Companies act (amendment).               | 1906..                               | Companies act amendment act.   |
| 1906..                                    | Do.                                      | <i>Natal.</i>                        |  |
| 1901..                                    | Companies (death duties) act.            | 1864..                               | Joint stock companies limited liability law.                             |
| <i>Victoria.</i>                          |  | 1865..                               | Law No. 18.  |
| 1890..                                    | Companies act (a consolidation act).     | 1866..                               | Winding-up law.  |
| 1892..                                    | Companies act amendment act.             | 1893..                               | Joint stock companies amendment law.                                     |
| 1895..                                    | Companies documents act.                 | 1896..                               | Law No. 3.   |
| 1896..                                    | Companies act amendment act.             | 1899..                               | Share-pledge act.  |
| 1896..                                    | Companies act.                           | <i>Transvaal.</i>                    |  |
| 1897..                                    | Companies act amendment act (September). | 1874..                               | Law No. 5, enacted by the Volksraad, resolution dated Oct. 31, 1874.     |
| 1897..                                    | Companies act amendment act (December).  | 1874..                               | Amendment, Nov. 18, 1874.  |
| 1900..                                    | Companies act.                           | 1890..                               | Amendment, May 10, 1890.   |
| 1903..                                    | Do.                                      | 1892..                               | Amendment, May 24, 1892.   |
| <i>South Australia.</i>                   |  | 1892..                               | Amendment by executive council Dec. 11, 1892, by authority of Volksraad. |
| 1892..                                    | Companies act (a consolidation act).     | 1894..                               | Volksraad resolution, June 2, 1894.                                      |
| 1893..                                    | Companies amendment act.                 | 1894..                               | Volksraad resolution, May 30, 1894.                                      |
| <i>Queensland.</i>                        |  | 1904..                               | Ordinance No. 30.  |
| 1863..                                    | Companies act.                           | <i>Orange River Colony.</i>          |  |
| 1886..                                    | British companies act.                   | 1891..                               | Statute law of Orange Free State chap. 100.                              |
| 1886..                                    | Mining companies act.                    | 1892..                               | Law No. 2.   |
| 1889..                                    | Companies act amendment act.             | 1892..                               | Law No. 4.   |
| 1890..                                    | Dividend duty act.                       | 1904..                               | Companies amendment ordinance No. 24.                                    |
| 1891..                                    | Companies act.                           | <i>British South Africa Co.</i>      |  |
| 1892..                                    | Companies (winding up) act.              | 1895..                               | Ordinance No. 2.   |
| 1893..                                    | Companies act.                           |                                      |  |
| 1894..                                    | Reconstructed companies act.             |                                      |  |
| 1895..                                    | Foreign companies act.                   |                                      |  |
| 1896..                                    | Do.                                      |                                      |  |
| <i>Tasmania.</i>                          |  |                                      |  |
| 1869..                                    | Companies act.                           |                                      |  |
| 1896..                                    | Companies act (amendment).               |                                      |  |



### **JAPAN.**

If a company does acts contrary to the public welfare or to good morals, the court may on the application of a public procurator or of its own motion order its dissolution. (Commercial Code of Japan, Book 11, Chap. 1, Sec. 48, Loenholm.)



## NEW ZEALAND.

### ACTS FOR THE REPRESSION OF MONOPOLIES IN TRADE OR COMMERCE.

[New Zealand Statutes, 1, Geo. V, 1910, No. 32.]

AN ACT For the repression of monopolies in trade or commerce. Title.  
[No v 21,  
1910.]  
*Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:*

1. This act may be cited as the “commercial trusts act, 1910,” and shall come into operation on the 1st day of Short title  
and commence-  
ment. January, 1911.

2. (1) In this act, unless the contrary intention appears, “commercial trust” means any association or combination (whether incorporated or not) of any number of persons, established either before or after the commencement of this act, and either in New Zealand or elsewhere, and (a) having as its object, or as one of its objects, that of (1) controlling, determining, or influencing the supply or demand or price of any goods in New Zealand or any part thereof or elsewhere, or that of (2) creating or maintaining in New Zealand or any part thereof or elsewhere a monopoly, whether complete or partial, in the supply or demand of any goods; or (b) acting in New Zealand or elsewhere with any such object as aforesaid; and includes any firm or incorporated company having any such object, or acting as aforesaid. Interpre-  
tation.

“Association” includes the union of any number of persons by or under any agreement or trust, whether temporary or permanent, and whether legally valid or not, and whether including any scheme of organization or common management or control or not.

“Member of a commercial trust” means any of the constituent persons of that trust, or any agent of that trust, and, where any such constituent person or agent is a corporation, firm, or association, includes every member or agent of that corporation, firm, or association.

"Person" includes a corporation, and as used in the foregoing definitions of "commercial trust," "association," and "member of a commercial trust" includes also a firm of partners or any other association or combination of persons.

Application  
of act.

(2) Nothing in this act shall apply to any goods other than those specified in the schedule hereto.

Illegal con-  
cessions in con-  
sideration of  
exclusive deal-  
ing.

3. Every person commits an offense who, either as principal or agent, in respect of dealings in any goods, gives, offers, or agrees to give to any other person any rebate, refund, discount, concession, allowance, reward, or other valuable consideration for the reason or upon the express or implied condition that the latter person—

(a) Deals or has dealt or will deal, or intends or undertakes or has undertaken or will undertake to deal, exclusively or principally, or to such an extent as amounts to exclusive or principal dealing, with any person or class of persons, either in relation to any particular goods or generally; or

(b) Does not deal or has not dealt or will not deal, or intends or undertakes or has undertaken or will undertake not to deal, with any person or class of persons, either in relation to any particular goods or generally; or

(c) Restricts or has restricted or will restrict, or intends or undertakes or has undertaken or will undertake to restrict, his dealing with any person or class of persons, either in relation to any particular goods or generally; or

(d) Is or becomes or has been, or has undertaken or will undertake to become, a member of a commercial trust; or

(e) Acts or has acted or will act, or intends or undertakes or has undertaken or will undertake to act, in obedience to or in conformity with the determinations, directions, suggestions, or requests of any commercial trust with respect to the sale, purchase, or supply of any goods.

Illegal re-  
fusals to deal.

4. Every person commits an offense who, either as principal or agent, refuses, either absolutely or except upon disadvantageous or relatively disadvantageous conditions, to sell or supply to any other person, or to purchase from any other person, any goods for the reason that the latter person—

(a) Deals or has dealt or will deal, or intends to deal, or has not undertaken or will not undertake not to deal,

with any person or class of persons, either in relation to any particular goods or generally; or

(b) Is not or has not been, or will not become or undertake to become or has not undertaken to become, a member of a commercial trust; or

(c) Does not act or has not acted or will not act, or does not intend to act, or has not undertaken or will not undertake to act, in obedience to or in conformity with the determinations, directions, suggestions, or requests of any commercial trust with respect to the sale, purchase, or supply of any goods.

5. Any person who conspires with any other person to monopolize wholly or partially the demand or supply in New Zealand or any part thereof of any goods, or to control wholly or partially the demand or supply or price in New Zealand or any part thereof of any goods, is guilty of an offense if such monopoly or control is of such a nature as to be contrary to the public interest. Illegal monopolies. mo-

6. (1) Every person commits an offense who, either as principal or agent, sells or supplies, or offers for sale or supply, any goods at a price which is unreasonably high, if that price has been in any manner directly or indirectly determined, controlled, or influenced by any commercial trust of which that person or his principal (if any) is or has been a member. Sales at prices fixed by a commercial trust.

(2) Every person commits an offense who, in obedience to or in consequence of or in conformity with any determination, direction, suggestion, or request of any commercial trust, whether he is a member of that trust or not, sells or supplies, or offers for sale or supply, any goods, whether as principal or agent, at a price which is unreasonably high.

7. (1) If any commercial trust, whether as principal or agent, sells or supplies, or offers for sale or supply, any goods at a price which is unreasonably high, every person who is then a member of that trust shall be deemed to have committed an offense against this act. Sales by a commercial trust.

(2) If in any such case the commercial trust is a corporation, it shall itself be guilty of an offense against this act; but the liability of the trust shall not exclude or affect the liability of its members under the last preceding subsection.

8. For the purposes of this act the price of any goods shall be deemed to be unreasonably high if it produces or is calculated to produce more than a fair and reason- When prices are to be deemed unreasonably high.

able rate of commercial profit to the person selling or supplying, or offering to sell or supply, those goods, or to his principal, or to any commercial trust of which that person or his principal is a member, or to any member of any such commercial trust.

Aiding and abetting of offenses against this act.

9. Every person who aids, abets, counsels, or procures, or is in any way knowingly concerned in the commission of, an offense against this act, or the doing of any act outside New Zealand which would if done in New Zealand be an offense against this act, shall be deemed to have committed that offense.

Penalty.

10. (1) Every person who commits an offense against this act shall be liable to a penalty of £500.

(2) If two or more persons are responsible for the same offense against this act, each of those persons shall be severally liable to a penalty of £500, and the liability of each of them shall be independent of the liability of the others.

Penalties recoverable by action in the supreme court.

11. Every such penalty shall constitute a debt due by the offender to His Majesty the King, and shall be recoverable, together with costs of suit, by a civil action in the supreme court, instituted by the attorney general for and in the name of His Majesty.

Supreme court may reduce penalty.

12. In any such action the supreme court may remit such part of the aforesaid penalty of £500 as it thinks fit, and may give judgment for the residue of the penalty only.

Injunction against repetition or continuance of offenses.

13. In any such action the supreme court may, in addition to the said penalty, grant an injunction against the continuance or repetition of the offense; but no such injunction shall be granted by way of interlocutory proceedings before final judgment in the action.

Joinder of parties and causes of action.

14. (1) In any such action claims may be joined for the recovery of penalties in respect of several offenses, whether of the same or different kinds.

(2) In any such action several persons may be joined as defendants, whether in respect of the same or of different offenses, and whether those offenses are committed by the same or by different parties; and in any such case separate judgments may be given in respect of each defendant so joined.

(3) In the case of any such joinder of causes of action or of parties the supreme court may give such directions as it thinks fit for the separate trial of any cause of action against any defendant.

15. (1) In any action for the recovery of a penalty or for an injunction under this act the supreme court may, in proof of any fact in issue, admit and accept as sufficient such evidence as it thinks fit, whether such evidence is legally admissible in other proceedings or not. Evidence.

(2) In any action for the recovery of a penalty or for an injunction under this act, no person, whether a party to the action or not, shall be excused from answering any question put to him by interrogatory or otherwise, or from producing or making discovery of any document, on the ground that the answer to the question or the production or discovery of the document would tend to criminate him in respect of any offense against this act.

## SCHEDULE.

Schedule.

## GOODS TO WHICH THIS ACT APPLIES.

Agricultural implements.

Coal.

Meat.

Fish.

Flour, oatmeal, and the other products or by-products of the milling of wheat or oats.

Petroleum or other mineral oil (including kerosene, naphtha, and the other products or by-products of any such oil).

Sugar.

Tobacco (including cigars and cigarettes).

## PATENTS, DESIGNS, AND TRADE-MARKS.

[1908, No. 140.]

AN ACT To consolidate certain enactments of the general assembly relating to patents for inventions and registration of designs and of trade-marks.

## COMPULSORY LICENSES.

28. If on the petition of any person interested it is proved to the governor that by reason of the default of a patentee to grant licenses on reasonable terms (a) the patent is not being worked in New Zealand; or (b) the reasonable requirements of the public with respect to the invention can not be supplied; or (c) any person is prevented from working or using to the best advantage an invention of which he is possessed, the governor may order the patentee to grant licenses on such terms as to the amount of royalties, security for Power for governor to order grant of licenses. (Ibid., sec. 33.)

payment, or otherwise, as the governor, having regard to the nature of the invention and the circumstances of the case, deems just, and any such order may be enforced by mandamus.

(New Zealand Consolidation Statutes, Vol. IV, Appendix D, act 140, sec. 28.)

### MONOPOLY PREVENTION ACT.

[1908, No. 122.]

AN ACT To consolidate certain enactments of the general assembly relating to the prevention of certain monopolies.

*Be it enacted by the general assembly of New Zealand in parliament assembled, and by the authority of the same, as follows:*

Short title. 1. (1) The short title of this act is "The monopoly prevention act, 1908."

Enactments consolidated. (2) This act is a consolidation of the enactments mentioned in the first schedule hereto, and with respect to those enactments the following provisions shall apply:

Savings. (a) All appointments, regulations, orders in council, orders, reports, recommendations, instruments, and generally all acts of authority which originated under any of the said enactments, and are subsisting or in force on the coming into operation of this act, shall enure for the purposes of this act as fully and effectually as if they had originated under the corresponding provisions of this act, and accordingly shall where necessary be deemed to have so originated.

(b) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this act, may be continued, completed, and enforced under this act.

(3) This act is divided into parts, as follows:

Part I. Agricultural implements. (Secs. 2 to 13.)

Part II. Flour and other products. (Secs. 14 to 24.)

#### PART I.—*Agricultural implements.*

Interpretation. (1905, No. 58, sec. 2.) 2. In this part of this act, if not inconsistent with the context, "implements" means the implements, machines, and appliances specified in the second schedule hereto; "minister" means the minister of customs.



3. (1) The minister shall cause to be compiled a statement showing in the case of each implement its description, the nature and quality of the materials used in its construction, and the price then current. Standard list to be compiled. (Ibid., sec. 3.)

(2) Such statement shall be published in the Gazette.

4. On complaint to the minister by any two or more manufacturers in New Zealand of any implement that the price of any implement on importation into New Zealand has been materially reduced, and that competition on unfair lines is being carried on by importers of implements from foreign countries, he shall summon the board hereinafter constituted and refer the matter of such complaint to it for report. Complaint of unfair competition. (Ibid., sec. 4.)

5. (1) There is hereby constituted a board called "The agricultural implement inquiry board," consisting of— Board constituted. (Ibid., sec. 5.)

The judge of the court of arbitration, who shall be chairman;

The president for the time being of the Farmers' Union;

The president of the Industrial Association of Canterbury;

Some person appointed by the governor on the recommendation of the trades and labor councils; and

Some person appointed by the governor on the recommendation of the agricultural and pastoral associations.

(2) The members of the board appointed by the governor shall be appointed in the same manner as members of the court of arbitration (other than the judge) are appointed.

(3) The board and its members as constituted under "The agricultural-implement manufacture, importation, and sale act, 1905," and subsisting on the coming into operation of this act, shall be deemed to be the board and its members under this act.

6. (1) The board on being summoned by the minister shall inquire with as little delay as possible into the matter referred to it in such manner as it thinks fit, and for the purposes of such inquiry shall have and may exercise all the powers that the court of arbitration has in respect of industrial disputes. Inquiry by board. (Ibid., sec. 6; 1907, No. 30, sec. 4.)

(2) The board may exercise its powers and functions at any meeting at which the judge of the court of arbitration and at least three other members of the board are present.

(3) The board shall report in writing to the minister the result of its inquiry, and shall state whether or not in its opinion the price of any implement imported into New Zealand has been materially reduced below that specified in the statement mentioned in section 3 hereof, and may recommend that relief be granted in the manner hereinafter appearing.

Duty may be imposed if New Zealand manufacturers reduce prices. (1905, No. 58, sec. 7.)

7. (1) If at any time the manufacturers of implements in New Zealand agree to reduce the price of the whole of the implements mentioned in the second schedule hereto, or not less than a moiety thereof, to at least 20 per cent below that specified in the statement mentioned in section 3 hereof, and notify the minister of such agreement, he shall summon the board and refer the matter to it for report.

(2) The board shall in like manner make inquiry into the matter, and report in writing to the minister whether or not in its opinion it is advisable for the protection of the industry in New Zealand that relief be granted as hereinafter mentioned.

Power to grant bonus. (1905, No. 58, sec. 8.)

8. (1) In any case where the board recommends that relief be granted it shall be lawful for the minister to grant to the manufacturers of implements in New Zealand such bonus, not exceeding 33 per cent, as he deems necessary to enable manufacturers to compete with importers of such implements.

(2) The right to such bonus shall be subject to such terms and conditions as the governor in council thinks fit to impose.

Implements manufactured in United Kingdom. (Ibid., sec. 9; 1907, No. 30, sec. 3.)

9. For the purposes of this act implements manufactured in the United Kingdom shall be deemed to be manufactured in New Zealand, and the importers of such implements shall be deemed to be manufacturers thereof in New Zealand.

Power to refund duty on certain materials. (1905, No. 58, sec. 10.)

10. (1) Whenever it is proved to the satisfaction of the collector that duty-paid materials have been used in the construction of any implement, he shall refund to the manufacturer of such implement the amount of duty paid on the materials so used.

(2) For the purposes of this section "materials" includes such parts of implements as can not advantageously be manufactured in New Zealand.

Report of board to be presented to Parliament. (1907, No. 30, sec. 5.)

11. Every report of the board shall be laid before Parliament within 10 days after its presentation to the minister of customs if Parliament is then sitting, and if

not, then within 10 days after the commencement of the next ensuing session.

12. (1) This part of this act shall be deemed to be incorporated with "the customs law act, 1908."

Act incorporated. (1905, No. 58, sec. 11; regulations, *ibid.*, sec. 12.)

(2) The governor may from time to time, by order in council gazetted, make regulations necessary for the carrying out of this part of this act.

13. This part of this act shall continue in operation till the 31st day of December, 1908, on which day it shall be deemed to be repealed.

Duration of this part of act. (1906, No. 21, sec. 2; 1907, No. 30, sec. 2.)

## PART II.—*Flour and other products.*

14. In this part of this act "the court" means the court of arbitration under "The industrial conciliation and arbitration act, 1908."

Interpretation. (1907, No. 34, sec. 2.)

15. Notwithstanding anything in "The customs duties act, 1908," it shall be lawful for the governor, at any time and from time to time, on the recommendation of the court, made in accordance with this part of this act, to declare, by order in council gazetted, that on and after a date to be specified in such order in council flour imported into New Zealand shall be admitted free of all duties of customs, and so long as any such order in council remains in force flour shall be exempt from such duties accordingly.

Flour may be exempted from customs duty. (*Ibid.*, sec. 3.)

16. Any such order in council may be revoked by the governor at any time as from a day to be specified in the order in council revoking the same, not being earlier than three months from the gazetting of the last-mentioned order in council.

Order in council remitting duty may be revoked. (*Ibid.*, sec. 4.)

17. The court may from time to time, at the direction of the governor, make an inquiry as to whether the wholesale market price of flour in New Zealand is unreasonably high, and if on such inquiry the court finds that such price is, or has at any time since the receipt of such direction from the governor been, unreasonably high, the court shall recommend the governor to exercise the powers conferred on him by section 15 hereof.

Court may inquire as to price of flour. (1907, No. 34, sec. 5.)

18. For the purposes of such inquiry the price of flour shall be deemed to be unreasonably high—

Unreasonable price of flour. (*Ibid.*, sec. 6.)

(a) If the average price of flour in New Zealand is, relatively to the price of wheat in New Zealand, higher than the average price of flour in Australia relatively to the average price of wheat in Australia, unless in the

opinion of the court the additional price in New Zealand is justified by additional cost of production; or

(b) If the average price of wheat in New Zealand has, by reason of any combination among the holders of stocks of wheat, or by reason of any complete or partial monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

Secs. 15 to 17 to apply to wheat. (Ibid., sec. 7.)

19. (1) The provisions of sections 15 to 17 hereof shall also apply to wheat in the same manner as to flour.

(2) For the purpose of any inquiry by the court under the authority of this part of this act the price of wheat shall be deemed to be unreasonably high if the average wholesale price in New Zealand has, by reason of any combination among the holders of stocks, or by reason of any complete or partial monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

Secs. 15 to 17 to apply to potatoes. (Ibid., sec. 8.)

20. (1) The provisions of sections 15 to 17 hereof shall also apply to potatoes in the same manner as to flour.

(2) For the purpose of any inquiry by the court under the authority of this part of this act the price of potatoes shall be deemed to be unreasonably high—

(a) If the average wholesale price in New Zealand exceeds £7 per ton; or

(b) If the average wholesale price in New Zealand has, by reason of any combination among the holders of stocks of potatoes, or by reason of any complete or partial monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

How average price determined. (Ibid., sec. 9.)

21. (1) The average price in New Zealand of any of the aforesaid articles shall be determined by the court for the purposes of this part of this act, by reference to the ordinary market price for the time being in Invercargill, Dunedin, Oamaru, Timaru, Christchurch, Wellington, and Auckland.

(2) The average price in Australia of any of the aforesaid articles shall be likewise determined by reference to the ordinary market price for the time being in Adelaide, Sydney, and Melbourne.

Court to have powers of commission. (Ibid., sec. 10.)

22. (1) In making any inquiry under the authority of this part of this act, the court shall be deemed to be a commission within "the commissions of inquiry act, 1908," and shall have all the powers conferred upon com-

missioners by that act, and shall be subject to all the provisions of that act accordingly.

(2) In making any such inquiry the court may receive and act on any evidence which it thinks fit, whether the same is legally admissible in a court of law or not.

23. (1) For the purposes of this part of this act there shall be added to the court one additional member thereof, to be appointed by the governor from time to time in the case of any inquiry under this part of this act, on the recommendation of a majority of the societies incorporated under "the agricultural and pastoral societies act, 1908."

Representatives of agricultural and pastoral societies to be a member of the court. (1907, No. 34, sec. 11.)

(2) The member so appointed shall be deemed to be a member of the court for the purpose of the inquiry in respect of which he was so appointed, but for no other purpose whatsoever.

(3) The recommendation of the said societies shall be made in such manner as is prescribed by regulations made by the governor in council.

(4) If the said societies fail to make any recommendation in accordance with such regulations, the governor may appoint as such additional member of the court any person whom he thinks fit.

(5) The additional member (if any) appointed under "the flour and other products monopoly prevention act, 1907," and in office on the coming into operation of this act, shall be deemed to be the additional member under this act.

24. (1) In the case of any inquiry under this part of this act the court may exercise its powers and functions at any sitting thereof at which there are present three members, including the judge of the court.

Quorum. (Ibid., sec. 12.)

(2) In the case of any division of opinion, if the members of the court who are present are equally divided in opinion, the decision of the judge shall be deemed to be the decision of the court.

#### FIRST SCHEDULE.

##### ENACTMENTS CONSOLIDATED.

1905, No. 58. The agricultural-implement manufacturer, importation, and sale act, 1905.

1906, No. 21. The agricultural-implement manufacture, importation, and sale act, extension act, 1906.

1907, No. 30. The agricultural-implement manufacture, importation, and sale act, 1907.

1907, No. 34. The flour and other products monopoly prevention act, 1907.

Secs. 2, 7,  
1905, No. 58,  
schedule.

## SECOND SCHEDULE.

## IMPLEMENTS TO WHICH PART I OF THIS ACT RELATES.

Flows of all kinds over 1½ hundredweight.

Tine harrows.

Disk harrows.

Drills, combined grain, seed, and manure, 10 coulters and over.

Drills, combined grain, seed, and manure, 10 coulters.

Drills, grain.

Rollers, land and Cambridge, over 7 hundredweight.

Cultivators and grubbers, over 2 hundredweight.

Chaff cutters, 9-inch mouth and over.

Self-bagging chaff cutters.

Seed cleaners.

(New Zealand Consolidated Statutes, Appendix D, Vol. IV, pp. 283 to 287.)

[1908, No. 236.]

Title. AN ACT To amend the monopoly prevention act, 1908.

[Oct. 10, 1908.]

*Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:*

Short title. 1. This act may be cited as the "monopoly prevention amendment act, 1908."

Operation of act extended. 2. (1) Part I of the monopoly prevention act, 1908, shall continue in operation until the 31st day of December, 1910, on which day it shall be deemed to be repealed.

Repeal. (2) Section 13 of the monopoly prevention act, 1908, is hereby repealed.

(New Zealand Statutes, 1908, No. 236, p. 110.)

[1907, No. 34.]

Title. AN ACT To prevent the establishment of monopolies in the sale of flour and other products.

[Nov. 19, 1907.]

*Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:*

Short title. 1. This act may be cited as the "flour and other products monopoly prevention act, 1907."

2. In this act "the court" means the court of arbitration under the industrial conciliation and arbitration act, 1905. Interpretation.

3. Notwithstanding anything contained in the tariff act, 1907, it shall be lawful for the governor, at any time and from time to time, on the recommendation of the court made in accordance with this act, to declare, by order in council gazetted, that on and after a date to be specified in such order in council flour imported into New Zealand shall be admitted free of all duties of customs, and so long as any such order in council remains in force flour shall be exempt from such duties accordingly. Flour may be exempted from customs duty.

4. Any such order in council may be revoked by the governor at any time as from a day to be specified in the order in council revoking the same, not being earlier than three months from the gazetting of the last-mentioned order in council. Order in council remitting duty may be revoked.

5. The court may from time to time, at the direction of the governor, make an inquiry as to whether the wholesale market price of flour in New Zealand is unreasonably high; and if on such inquiry the said court finds that such price is, or has at any time since the receipt of such direction from the governor been, unreasonably high, the said court shall recommend the governor to exercise the powers conferred upon him by section 3 of this act. Court may inquire as to price of flour.

6. For the purposes of such inquiry the price of flour shall be deemed to be unreasonably high— Unreasonable price of flour.

(a) If the average price of flour in New Zealand is, relatively to the price of wheat in New Zealand, higher than the average price of flour in Australia relatively to the average price of wheat in Australia, unless in the opinion of the court the additional price in New Zealand is justified by additional cost of production; or

(b) If the average price of wheat in New Zealand has, by reason of any combination among the holders of stocks of wheat, or by reason of any complete or partial monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

7. (1) The provisions of sections 3, 4, and 5 of this act shall also apply to wheat in the same manner as to flour. Act to apply also to wheat.

(2) For the purpose of any inquiry by the court under the authority of this act, the price of wheat shall be deemed to be unreasonably high if the average wholesale price in New Zealand has, by reason of any combination

among the holders of stocks or by reason of any complete or partial monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

Act to apply  
also to pota-  
toes.

8. (1) The provisions of sections 3, 4, and 5 of this act shall also apply to potatoes in the same manner as to flour.

(2) For the purpose of any inquiry by the court under the authority of this act, the price of potatoes shall be deemed to be unreasonably high—

(a) If the average wholesale price in New Zealand exceeds £7 per ton; or

(b) If the average wholesale price in New Zealand has, by reason of any combination among the holders of stocks of potatoes or by reason of any complete or partial monopoly established by any such holder, been raised above the price which would be determined by unrestricted competition.

How average  
price deter-  
mined.

9. The average price in New Zealand of any of the aforesaid articles shall be determined by the said court for the purposes of this act by reference to the ordinary market price for the time being in Invercargill, Dunedin, Timaru, Oamaru, Christchurch, Wellington, and Auckland. The average price in Australia of any of the aforesaid articles shall be likewise determined by reference to the ordinary market price for the time being in Adelaide, Sydney, and Melbourne.

Court to  
have powers of  
commission.

10. (1) In making any inquiry under the authority of this act the court shall be deemed to be a commission within the commissioners act, 1903, and shall have all the powers conferred upon commissioners by that act, and shall be subject to all the provisions of that act accordingly.

(2) In making any such inquiry the said court may receive and act on any evidence which it thinks fit, whether the same is legally admissible in a court of law or not.

Representa-  
tive of agricul-  
tural and pas-  
toral societies  
to be a member  
of the court.

11. (1) For the purposes of this act there shall be added to the court one additional member thereof, to be appointed by the governor from time to time in the case of any inquiry under this act, on the recommendation of a majority of the societies incorporated under the agricultural and pastoral societies act, 1877.

(2) The member so appointed shall be deemed to be a member of the said court for the purpose of the inquiry



in respect of which he was so appointed, but for no other purpose whatsoever.

(3) The recommendation of the said societies shall be made in such manner as is prescribed by regulations made by the governor in council.

(4) If the said societies fail to make any recommendation in accordance with such regulations, the governor may appoint as such additional member of the said court any person whom he thinks fit.

12. (1) In the case of any inquiry under this act the court may exercise its powers and functions at any sitting thereof at which there are present three members, including the judge of the said court.

Quorum.

(2) In the case of any division of opinion, if the members of the said court who are present are equally divided in opinion, the decision of the said judge shall be deemed to be the decision of the court.

(New Zealand Statutes, 7 Edw. VII, 1907, pp. 137 to 139.)

[1907, No. 30.]

AN ACT To amend the agricultural-implement manufacture, importation, and sale act, 1905, and to continue the operation thereof.

Title.

[Nov. 13, 1907.]

*Be it enacted by the General Assembly of New Zealand, in Parliament assembled, and by the authority of the same, as follows:*

1. This act may be cited as the "agricultural-implement manufacture, importation, and sale act, 1907."

Short title.

2. Section 2 of the agricultural-implement manufacture, importation, and sale act extension act, 1906, is hereby amended by omitting the word "seven" and substituting the word "eight."

Act of 1906 extended.

3. Section 9 of the agricultural-implement manufacture, importation, and sale act, 1905, is hereby amended by omitting the words "of British manufacture" and substituting the words "manufactured in the United Kingdom."

Sec. 9 of act of 1905 amended.

4. The board constituted by the last-mentioned act may exercise its powers and functions at any meeting at which the judge of the court of arbitration and at least three other members of the board are present.

Quorum of agricultural-implement inquiry board.

5. The report of the board shall be laid before Parliament within 10 days after its presentation to the minister of customs if Parliament is then sitting, and if not,

Report of board to be presented to Parliament.

then within 10 days after the commencement of the next ensuing session.

(New Zealand Statutes, 7 Edw. VII, 1907, p. 129.)

[1906, No. 21.]

**Title.** AN ACT To revive "the agricultural-implement manufacture, importation, and sale act, 1905."

[Oct. 23, 1906.]

*Be it enacted by the General Assembly of New Zealand, in Parliament assembled, and by the authority of the same, as follows:*

**Short title.** 1. The short title of this act is "The agricultural-implement manufacture, importation, and sale act extension act, 1906."

**Continuation of act.** 2. (1) The agricultural-implement manufacture, importation, and sale act, 1905, shall continue in operation and be deemed to have continued in operation as if section 13 thereof had not been passed until the 31st day of December, 1907.

**Repeal.** (2) The said section 13 is hereby repealed.  
(New Zealand Statutes, 1906, No. 21, p. 71.)

[1905, No. 58.]

**Title.** AN ACT To regulate and control the manufacture and sale of certain agricultural implements within New Zealand and the importation of the same implements from foreign countries.

[Oct. 31, 1905.]

*Be it enacted by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:*

**Short title.** 1. The short title of this act is "The agricultural implement manufacture, importation, and sale act, 1905."

**Interpretation.** 2. In this act, if not inconsistent with the context, "commissioner" means the commissioner of trade and customs; "implements" means the implements, machines, and appliances specified in the schedule hereto.

**Standard list to be compiled.** 3. (1) As soon as practicable after the passing of this act the commissioner shall cause to be compiled a statement showing in the case of each implement its description, the nature and quality of the materials used in its construction, and the price current on the passing of this act.

(2) Such statement shall be published in the Gazette.

**Complaint of unfair competition.** 4. On complaint to the commissioner by any two or more manufacturers in New Zealand of any implement

that the price of any implement on importation into New Zealand has been materially reduced, and that competition on unfair lines is being carried on by importers of implements from foreign countries, he shall summon the board hereinafter constituted and refer the matter of such complaint to it for report.

5 (1) There is hereby constituted a board called "the <sup>Board consti-  
tuted.</sup> agricultural implement inquiry board," consisting of—

The president of the arbitration court, who shall be chairman;

The president for the time being of the Farmers' Union;

The president of the Industrial Association of Canterbury;

Some person appointed by the governor on the recommendation of the trades and labor councils; and

Some person appointed by the governor on the recommendation of the agricultural and pastoral associations.

(2) The members of the board appointed by the governor shall be appointed in the same manner as members of the arbitration court (other than the president) are appointed.

6. (1) The board on being summoned by the commissioner shall inquire with as little delay as possible into the matter referred to it in such manner as it thinks fit, and for the purposes of such inquiry shall have and may exercise all the powers that the arbitration court has in respect of industrial disputes. <sup>Inquiry by  
board.</sup>

(2) The board shall report in writing to the commissioner the result of its inquiry, and shall state whether or not in its opinion the price of any implement imported into New Zealand has been materially reduced below that specified in the statement mentioned in section 3 hereof, and may recommend that relief be granted in the manner hereinafter appearing.

7. (1) If at any time after the passing of this act the manufacturers of implements in New Zealand agree to reduce the price of the whole of the implements mentioned in the schedule hereto, or not less than a moiety thereof, to at least 20 per cent below that specified in the statement mentioned in section 3 hereof, and notify the commissioner of such agreement, he shall summon the board and refer the matter to it for report. <sup>Duty may be  
imposed if New  
Zealand manu-  
facturers re-  
duce prices.</sup>

(2) The board shall in like manner make inquiry into the matter, and report in writing to the commissioner whether or not, in its opinion, it is advisable for the pro-

tection of the industry in New Zealand that relief be granted as hereinafter mentioned.

Power to  
grant bonus.

8. (1) In any case where the board recommends that relief be granted it shall be lawful for the commissioner to grant to the manufacturers of implements in New Zealand such bonus, not exceeding 33 per cent, as he deems necessary to enable manufacturers to compete with importers of such implements.

(2) The right to such bonus shall be subject to such terms and conditions as the governor in council thinks fit to impose.

Implements of  
British manu-  
facture.

9. For the purposes of this act implements of British manufacture shall be deemed to be manufactured in New Zealand, and the importers of such implements shall be deemed to be manufacturers thereof in New Zealand.

Power to  
refund duty on  
certain mate-  
rials.

10. (1) Whenever it is proved to the satisfaction of the collector that duty-paid materials have been used in the construction of any implement, he shall refund to the manufacturer of such implement the amount of duty paid on the materials so used.

(2) For the purposes of this section materials include such parts of implements as can not advantageously be manufactured in New Zealand.

Acts incorpo-  
rated.

11. This act shall be deemed to be incorporated with "the customs laws consolidation act, 1882," and its amendments.

Regulations.

12. The governor may from time to time, by order in council gazetted, make regulations necessary for the carrying out of this act.

Duration of  
act.

13. This act shall continue in operation till the 1st day of August, 1906, on which day it shall be deemed to be repealed.

Schedule.

#### SCHEDULE.

##### IMPLEMENTS TO WHICH THIS ACT RELATES.

Plows of all kinds over 1½ hundredweight.

Tine harrows.

Disk harrows.

Drills, combined grain, seed, and manure, 10 colters and over.

Drills, combined grain, seed, and manure, 10 colters.

Drills, grain.

Rollers, land and Cambridge, over 7 hundredweight.

Cultivators and grubbers, over 2 hundredweight.

Chaff cutters, 9-inch mouth and over.

Self-bagging chaff cutters.

Seed cleaners.

(New Zealand Statutes, 5 Edw. VII. 1905, pp. 601-603.)















KF 1636 1913

Author

William, Nathan Boone

Vol.

Title

Laws on trusts and monopolies  
demestic and foreign, /w authorities

Copy

|      |                 |
|------|-----------------|
|      |                 |
| Date | Borrower's Name |
|      |                 |
|      |                 |
|      |                 |

